

NOS. 14-2222, 14-2339

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

NESTLÉ DREYER'S ICE CREAM COMPANY,

Petitioner-Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent-Cross-Petitioner.

ON PETITION TO REVIEW AND APPLICATION FOR ENFORCEMENT OF
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

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JOINT APPENDIX TABLE OF CONTENTS

October 12, 2011 National Labor Relations Board Petition	A-1
October 13, 2011 Notice of Representation Hearing.....	A-2
October 27 – 28, 2011 Representation Hearing Transcript	A-3
John Pritchard Direct Examination	A-12
John Pritchard Cross Examination.....	A-72
John Pritchard Re-Direct Examination	A-101
John Pritchard Re-Cross Examination	A-103
Norma McFaddin Direct Examination.....	A-123
Norma McFaddin Cross Examination	A-164
Norma McFaddin Re-Direct Examination.....	A-195
Roy Beyeler Direct Examination	A-198
Roy Beyeler Cross Examination.....	A-261
Roy Beyeler Re-Direct Examination	A-300
Roy Beyeler Re-Cross Examination	A-302
Hearing Exhibit 4, PowerPoint presentation.....	A-306
Hearing Exhibit 9, Employee Handbook	A-329
Hearing Exhibit 11, 1990 Collective Bargaining Agreement.....	A-356
Hearing Exhibit 13, October 23, 1991 National Labor Relations Board Petition	A-400
November 23, 2011 Decision and Direction of Election	A-402
December 28, 2011 National Labor Relations Board Order.....	A-426
February 9, 2012 Unfair Labor Practice Charge.....	A-427
May 18, 2012 National Labor Relations Board Decision and Order.....	A-428
July 29, 2014 Fourth Circuit Judgment.....	A-431
July 29, 2014 Fourth Circuit Order	A-434
November 5, 2014 National Labor Relations Board Decision and Order	A-437

OCT-13-2011 15:18

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FORM EXEMPT UNDER 44 U.S.C.

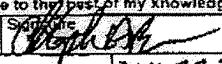
INTERNET
FORM NLRB-502
(2-00)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 31-RC-066625	Date Filed 10-12-2011

INSTRUCTIONS Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

- 1 PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☒ **RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees
- ☐ **RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner
- ☐ **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded
- ☐ **UC-UNIT CLARIFICATION** - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ **AC-AMENDMENT OF CERTIFICATION** - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought

2 Name of Employer Nestle-Dreyer's Grand Ice Cream, Inc.		Employer Representative to contact		Tel No 661-398-3500	
3 Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 7301 District Blvd, Bakersfield, CA 93313				Fax No	
4a Type of Establishment (Factory, mine, wholesaler, etc.) production		4b Identify principal product or service Ice Cream		Cell No	
				e-Mail	
5 Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification) Included all maintenance personnel Excluded production and supervisory				6a Number of Employees in Unit Present 95 Proposed (By UC/AC)	
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)				6b Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC	
7a <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state)					
7b <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act					
8 Name of Recognized or Certified Bargaining Agent (If none, so state) none				Affiliation	
Address		Tel No		Date of Recognition or Certification	
		Cell No		Fax No	
				e-Mail	
9 Expiration Date of Current Contract if any (Month, Day, Year) none		10 If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)			
11a Is there now a strike or picketing at the Employer's establishment(s) involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11b If so, approximately how many employees are participating?			
11c The Employer has been picketed by or on behalf of (Insert Name) _____ a labor organization of (Insert Address) _____ Since (Month, Day, Year) _____					
12 Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above (If none, so state)					
Name		Address		Tel No	
				Fax No	
None				Cell No	
				e-Mail	
13 Full name of party filing petition (If labor organization, give full name, including local name and number) International Union of Operating Engineers, Local 501,					
14a Address (street and number, city, state, and ZIP code) 5330 Office Center Court, Bakersfield, CA 93309				14b Tel No EXT	
				14c Fax No	
				14d Cell No	
				14e e-Mail	
15 Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization) International Union of Operating Engineers, Local 501, AFL-CIO					
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.					
Name (Print) CHRISTOPHER A. BROWN		Signature 		Title (if any) BUS. MGR	
Address (street and number, city, state, and ZIP code) 2405 W. 3rd STREET, LOS ANGELES, CA 90057		Tel No 213-385-2457		Fax No 213-385-7324	
		Cell No 213-220-4055		e-Mail CHRIS01@GMAIL.COM	

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31



NESTLE-DREYER'S GRAND ICE CREAM, INC. Employer and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501 Petitioner	Case 31-RC-066625
---	--------------------------

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 a.m. on **October 20, 2011** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at, 11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1825, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act*, is attached.

Dated: October 13, 2011

/s/ Mori Pam Rubin

MORI PAM RUBIN, Acting Regional Director
National Labor Relations Board
Region 31
11150 W OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

TOTAL P.03

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

)	
NESTLE DREYER'S ICE CREAM,)	
)	
Employer,)	
)	
and)	Case 31-RC-066625
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS LOCAL 501,)	
AFL-CIO,)	
)	
Petitioner.)	

The above-entitled matter came on for hearing pursuant to Notice, before **YANETH PALENCIA, Hearing Officer**, at the National Labor Relations Board, Region 31, located at 11150 West Olympic Boulevard, Suite 700, in Los Angeles, California, on Thursday, October 27, 2011.

Argie Reporting Service
5900 Nieman Road, Suite 200
Shawnee, Kansas 66203
Phone: (913) 422-5198

A P P E A R A N C E S

On Behalf of the Employer:

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
JOHN PRITCHARD	10	70	99	101		91 103
NORMA McFADDIN	121	162	193		125 132	128 136 173 193
ROY BEYELER	196	259				

EXHIBITS**EXHIBIT****IDENTIFIED****IN EVIDENCE**

BOARD

1 (a)-(f)

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EMPLOYER

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P R O C E E D I N G S

(9:57 a.m.)

HEARING OFFICER PALENCIA: The hearing will be in order.

This is a formal hearing in the matter of Nestlé-Dreyer's Ice Cream, Case No. 31-RC-066625, before the National Labor Relations Board.

The Hearing Officer appearing for the NLRB is Yaneth Palencia, spelled Y-a-n-e-t-h, P-a-l-e-n-c-i-a.

All parties have been informed of the procedures at formal hearings before the Board, by service of a Statement of Standard Procedures with the Notice of Hearing. I have additional copies of this Statement if any party wants more.

Will Counsel please state their appearance for the record?
For the Petitioner?

MR. STERN: Adam Stern on behalf of the Petitioner, IUOE, Local 501.

HEARING OFFICER PALENCIA: And for the Employer?

MR. BOBBER: Bernard Bobber of Foley & Lardner, LLP, on behalf of the Employer, Nestlé-Dreyer's Ice Cream.

HEARING OFFICER PALENCIA: Are there any other appearances?

(No response.)

HEARING OFFICER PALENCIA: Let the record reflect no response.

Are there any other persons, parties, or labor

1 organizations in the hearing room who claim an interest in this
2 proceeding?

3 (No response.)

4 HEARING OFFICER PALENCIA: Let the record show no further
5 -- show no response.

6 We are going to do the introduction of Formal Papers. I
7 now propose to receive the Formal Papers. They have been
8 marked for identification as Board's Exhibit No. 1(a) through
9 1(f), with 1(f) being and Index and Description of the Formal
10 Documents.

11 **(Board's Exhibit No. 1(a) through 1(f), inclusive, marked for**
12 **identification.)**

13 HEARING OFFICER PALENCIA: The exhibit has already been
14 shown to all parties. Are there any objections of these
15 exhibits into the record?

16 Mr. Stern?

17 MR. STERN: No.

18 HEARING OFFICER PALENCIA: And Mr. Bobber?

19 MR. BOBBER: No.

20 HEARING OFFICER PALENCIA: Hearing no objections, the
21 Formal Papers are received into evidence.

22 **(Board's Exhibit No. 1(a) through 1(f), inclusive, received**
23 **into evidence.)**

24 HEARING OFFICER PALENCIA: We also have Board's Exhibit
25 No. 2, and it is a stipulation agreed to by the parties, and

1 received by the Hearing Officer.

2 **(Board's Exhibit No. 2, marked for identification.)**

3 HEARING OFFICER PALENCIA: The parties to this proceeding
4 have executed, and I have approved, what has been marked as
5 Board Exhibit No. 2.

6 The exhibit contains a series of stipulations including,
7 among other things, the Petitioner is a labor organization
8 within the meaning of the Act, there is no contract bar, and
9 that the Employer meets the jurisdictional standards of the
10 Board. There is also a description of the petitioned-for unit
11 and the Employer's proposed unit.

12 Are there any objections to the receipt of Board Exhibit
13 No. 2?

14 Mr. Stern?

15 MR. STERN: No.

16 HEARING OFFICER PALENCIA: And Mr. Bobber?

17 MR. BOBBER: No objection.

18 HEARING OFFICER PALENCIA: Hearing no objections, Board
19 Exhibit No. 2 is received into evidence.

20 **(Board's Exhibit No. 2, received into evidence.)**

21 HEARING OFFICER PALENCIA: Are there any pre-hearing
22 motions that need to be made by anybody at this time?

23 MR. STERN: No.

24 MR. BOBBER: No, ma'am.

25 HEARING OFFICER PALENCIA: Are there any motions to

1 intervene in these proceedings to be submitted to the Hearing
2 Officer at this time?

3 (No response.)

4 HEARING OFFICER PALENCIA: Let the record reflect no
5 response.

6 Are the parties aware of any other employers or labor
7 organizations that have an interest in this proceeding?

8 Mr. Stern?

9 MR. STERN: No.

10 HEARING OFFICER PALENCIA: Mr. Bobber?

11 MR. BOBBER: No.

12 HEARING OFFICER PALENCIA: The issues are described in
13 Board Exhibit No. 2. It is Page 3 under No. 9. In presenting
14 your evidence, please be sure to be specific, give detailed
15 evidence in support of your position; general conclusionary
16 statements by witnesses will not be sufficient.

17 It is my understanding that there are no other petitions
18 pending in any other regional office involving other facilities
19 of the Employer. Is that your understanding?

20 For the Employer, Mr. Bobber?

21 MR. BOBBER: Yes.

22 HEARING OFFICER PALENCIA: Mr. Stern?

23 MR. STERN: I have no knowledge of any.

24 HEARING OFFICER PALENCIA: And just for the record, Board
25 Exhibit No. 2, Page No. 3, the issues of this hearing and which

1 we will hear evidence on, is that the Employer's position is
2 that the bargaining unit should consist of production employees
3 and maintenance employees. The petitioned-for unit and the
4 position of the Petitioner is that a bargaining unit consisting
5 of just the maintenance is appropriate.

6 Is that correct?

7 MR. STERN: Yes.

8 MR. BOBBER: Yes.

9 HEARING OFFICER PALENCIA: Well, let's proceed with the
10 presentation of evidence.

11 MR. BOBBER: Madame Hearing Officer, the Employer expects
12 to present three witnesses today, and the first that I would
13 like to call is Mr. John Pritchard.

14 Would you like Mr. Pritchard to take the stand?

15 HEARING OFFICER PALENCIA: Yes, sir.

16 Please raise your right hand.

17 Whereupon,

18 **JOHN PRITCHARD,**

19 having been sworn, was called as a witness herein, and was
20 examined and testified, as follows:

21 HEARING OFFICER PALENCIA: Can you please state your name
22 for the record.

23 THE WITNESS: John Pritchard.

24 HEARING OFFICER PALENCIA: Can you spell your name for us,
25 please?

1 THE WITNESS: J-o-h-n, P-r-i-t-c-h-a-r-d.

2 HEARING OFFICER PALENCIA: You may proceed.

3 MR. BOBBER: Thank you.

4 **DIRECT EXAMINATION**

5 Q BY MR. BOBBER: Mr. Pritchard, how are you employed?

6 A I am the Plant Manager at the Bakersfield, California ice
7 cream factory.

8 Q For what company, sir?

9 A For Nestlé-Dreyer's Ice Cream.

10 Q And that Bakersfield plant that you referred to, is that
11 known by some acronym?

12 A Yes, BOC.

13 Q What does BOC stand for?

14 A Bakersfield Operations Center.

15 Q And for our record, where is this located, specifically?

16 A On -- at 7301 District Boulevard in Bakersfield,
17 California.

18 Q Do you have a formal title?

19 A Myself? Plant Manager.

20 Q And in that job of Plant Manager, would you give us a
21 description of your duties and responsibilities?

22 A I am -- well, the factory manager, so everything from
23 planning production to receiving to making ice cream to getting
24 it shipped to our customers and consumers, and all of the
25 things that are needed to support that operation.

1 Q Are you the top management person at the Bakersfield
2 operation?

3 A Yes, I am.

4 Q And to whom do you report?

5 A I report to the Vice-President of Operations for Nestlé-
6 Dreyer's Ice Cream.

7 Q Who is that?

8 A Eduardo Aguilera.

9 Q And where does he maintain his office?

10 A He is in the Dreyers Ice Cream headquarters in Oakland,
11 California.

12 Q For how long have you held this position as Plant Manager
13 in the Bakersfield plant?

14 A Not quite three and a half years.

15 Q Prior to getting this job, did you have any other
16 employment with Nestlé-Dreyer's or Nestlé?

17 A I have been employed by the Company for about eight and a
18 half years, so five years at other locations before
19 Bakersfield.

20 Q And in what types of jobs, sir?

21 A All in plant manager jobs in different locations.

22 Q Which locations were you a Plant Manager at?

23 A Tulare, California, Commerce, California, and Union City,
24 California.

25 Q Let's focus on the Bakersfield plant.

1 Would you give a general description of the business of
2 the Company at this facility?

3 A We are the largest ice cream plant in the world in terms
4 of volume. We make two basic segments of ice cream; one called
5 packaged ice cream, which would be a 48-ounce container that is
6 sold in a food store, as well as what we call snack items,
7 which are ice cream items that are generally consumed one at a
8 time, cones, bars, sandwiches, and things like that.

9 MR. BOBBER: Ms. Palencia, do you have a preference for
10 how exhibits are marked, handled, introduced?

11 HEARING OFFICER PALENCIA: No. I assume we will just go
12 in order unless they have been pre-marked.

13 MR. BOBBER: I did not pre-mark them.

14 HEARING OFFICER PALENCIA: Okay, well just mark them as we
15 go along.

16 THE COURT REPORTER: Are you going to mark this as
17 Employer's Exhibit No. 1?

18 MR. BOBBER: Yes, please.

19 **(Employer's Exhibit No. 1, marked for identification.)**

20 Q BY MR. BOBBER: Mr. Pritchard, I am handing you a single-
21 page document that is marked as Employer's Exhibit No. 1.
22 Would you please identify what this is?

23 A So, this is a sampling of products that we make in the
24 Bakersfield plant. The top products in the top row are really
25 what I was referring to as our packaged ice cream products.

1 Everything from what we call Grand Ice Cream to Slow-Churned,
2 to some of the other varieties of ice cream that are produced
3 within the packaged segment of our business.

4 The bottom pictures are really what I referred to as our
5 snack items, so things like sandwiches and bars and
6 Drumsticks™, and Push-Ups™, and Skinny Cow™ cones and
7 sandwiches and dips, those are all different products that we
8 make within the snack side of our business.

9 Q And are the photos shown on this page, of products that
10 you currently make at the Bakersfield facility?

11 A Yes -- well, everything except the Shrek® one, we don't
12 make that anymore. That was a -- we produced it while the
13 movie was out.

14 Q I see.

15 MR. BOBBER: I would offer Employer's Exhibit No. 1.

16 HEARING OFFICER PALENCIA: To be admitted into evidence?

17 MR. BOBBER: Yes.

18 HEARING OFFICER PALENCIA: Any objection?

19 MR. STERN: No.

20 HEARING OFFICER PALENCIA: Hearing no objection,
21 Employer's Exhibit No. 1 is received into evidence.

22 **(Employer's Exhibit No. 1, received into evidence.)**

23 Q BY MR. BOBBER: Would you -- Mr. Pritchard, would you
24 please give us a description of the -- of the Bakersfield
25 facility, the physical facility itself?

1 A We are a -- we are located on a site that is about 47
2 acres. The factory itself, including the Distribution Center,
3 is give or take 595,000 square feet. Within that building,
4 then, are office space, Frozen Warehouse, Dry Warehouse, and
5 the production facilities, and the utilities that are needed to
6 support and maintain the business.

7 [Long pause.]

8 HEARING OFFICER PALENCIA: Could we go off the record?
9 (Off the record.)

10 HEARING OFFICER PALENCIA: Back on the record.

11 Q BY MR. BOBBER: So, Mr. Pritchard, I have handed to you,
12 and then we taped up on the wall, a large piece of paper.

13 **(Employer's Exhibit No. 2, marked for identification.)**

14 Q BY MR. BOBBER: Would you please identify what is shown on
15 this document?

16 A This is a site map of the factory, itself. Starting from
17 kind of right to left, east to west, this is the main entrance,
18 main parking lot where everyone who works in the factory, from
19 Production to Maintenance people, office people, all park over
20 on this lot here, and then we have our Visitors' Center up here
21 in this corner of the little curved part of the office space.
22 All of our employees enter through one of these two doors, and
23 this main corridor here --

24 HEARING OFFICER PALENCIA: If we can -- because we are not
25 going to be able to see what you are looking --

1 THE WITNESS: Yes.

2 HEARING OFFICER PALENCIA: -- if you can tell us if there
3 are any markings on that, so the person reading the transcript
4 can understand what you are referring to.

5 Now, what the witness is referring to has been marked as
6 Employer's Exhibit No. 2.

7 So, if we can go over what you just said, but maybe, it we
8 could do maybe Point A, Point B, or some sort of markings so
9 that it becomes clear to the person reading --

10 MR. BOBBER: Absolutely so.

11 HEARING OFFICER PALENCIA: Thank you.

12 Q BY MR. BOBBER: So, Mr. Pritchard, would you restart your
13 explanation of what we see on this document and use the letter
14 references suggested by the Hearing Officer.

15 A All right, so let's say, the Employee Parking Lot is "A."
16 The Employee Entrance is "B." The -- at that point in time,
17 the time clock that everyone would punch into is Exhibit --
18 excuse me, reference mark "C."

19 HEARING OFFICER PALENCIA: Excuse me, "A" is what?

20 THE WITNESS: "A" is the parking lot for all of the
21 employees, Production and Maintenance and Office. "B" is the
22 employee entrance.

23 HEARING OFFICER PALENCIA: Employee entrance for all
24 employees, or --

25 THE WITNESS: All except for a couple of us in offices up

1 here in the corner, yes. All factory employees go through
2 that, yes.

3 Q BY MR. BOBBER: Continue.

4 A "C" is where the time clocks are.

5 HEARING OFFICER PALENCIA: Time clock for whom?

6 THE WITNESS: For all of the Production and Maintenance
7 employees.

8 HEARING OFFICER PALENCIA: All right.

9 THE WITNESS: Right now, I am going from right to left, so
10 I am only talking factory, at this time. There is a whole
11 other entrance and other parking lot, but I will get to that as
12 I go across.

13 "D" is then the break room where, again, anybody who goes
14 on break or has a meal break would eat their lunch, dinner,
15 breakfast in that room, for all Maintenance and Production
16 people.

17 "E" is the locker facilities, so there is a men's locker
18 room and a women's locker room. All Production and Maintenance
19 employees would get changed, after they have punched in, into
20 their uniform before going out to their pre-shift assembly
21 area.

22 "F" would be our Team Meeting Rooms where all of the
23 different Business Units have specific rooms associated with
24 them, and/or all of the support functions, so that they can
25 meet there before they go out on the Manufacturing/Production

1 floor.

2 Then, "G" would be the entrance to the production area.

3 Q BY MR. BOBBER: Okay, and at the facility, how is that
4 entrance designated? Do you go through doors, for example?

5 A Yes, there are a pair of doors that you go through, and of
6 course, because of our food manufacturing facility, you have
7 got to get your -- you would have to have all of your PPE on,
8 you have to wash your hands, and make sure you walk through the
9 water bath to cleanse the bottom of your feet.

10 Q And, of course, PPE stands for?

11 A Personal Protective Equipment; safety shoes, uniforms,
12 hearing protection, hair net, ear guard, and hard hat --

13 Q Okay, and I --

14 A -- and the safety glasses.

15 Q -- will ask you about some of these details in a little
16 bit, but let's proceed with the facility description as you
17 look at this diagram.

18 A So, then, just the general facilities, "H" is our Dry
19 Warehouse area, so that is where we store all of our
20 ingredients and materials that we use to produce ice cream that
21 don't need to be frozen. Along with that, we have "I" as our
22 Receiving Dock for those dry ingredients.

23 MR. STERN: I'm sorry, I don't mean to interrupt, but "H"
24 and "I" look the same, so for clarity issues --

25 THE WITNESS: I'm sorry.

1 Q BY MR. BOBBER: Why don't you do a lowercase "I" next to
2 your "i?"

3 [Witness complies.]

4 Q Thank you.

5 A "J" is really the production lines, which is this whole
6 strip of --

7 HEARING OFFICER PALENCIA: Would you like to take a yellow
8 or there is a pink highlighter, and why don't you circle the
9 production area?

10 MR. BOBBER: That would be great.

11 [Witness complies.]

12 Q BY MR. BOBBER: Okay.

13 A All right, so pink is the production area where basically
14 all of the production lines are.

15 The last part of production then is the palletizing area,
16 which would be "J-1" and "J-2." Those are the areas where we
17 take the production and put it onto a pallet so that it is then
18 available to go to the warehouse for shipping.

19 HEARING OFFICER PALENCIA: Do you want to continue
20 marking?

21 THE WITNESS: That is pretty much the end of the factory,
22 at this point.

23 HEARING OFFICER PALENCIA: I can maybe suggest that you
24 might use another marker now, because it is starting to get a
25 little confusing, I think.

1 THE WITNESS: All right.

2 MR. BOBBER: Sure.

3 HEARING OFFICER PALENCIA: Or maybe I have a --

4 Q BY MR. BOBBER: So, Mr. Pritchard, if that is the end of
5 the factory description, what else do we see here on this
6 diagram from the center of it over to the left side as we face
7 it?

8 A So, the -- this section here, which is "K" is the original
9 frozen warehouse facility, which we call ASRS for Automatic
10 Storage/Retrieval System.

11 HEARING OFFICER PALENCIA: Let's go off the record while I
12 get a better marker.

13 (Off the record.).

14 HEARING OFFICER PALENCIA: Back on the record.

15 THE COURT REPORTER: We are.

16 Q BY MR. BOBBER: Okay, go ahead.

17 A Okay, so again, this is the original frozen warehouse,
18 "K?"

19 HEARING OFFICER PALENCIA: The witness is pointing to a
20 letter "K" -- which is designated as "K."

21 THE WITNESS: And, in 2005, we did an expansion and built
22 a new Frozen Warehouse, letter "L," and then back here is --

23 HEARING OFFICER PALENCIA: Okay, but you circled that
24 entire -- you put "L" and underneath "L" there is a big circle,
25 and that circle represents what?

1 THE WITNESS: It is the new -- the new part of the Frozen
2 Distribution Center.

3 HEARING OFFICER PALENCIA: And can you maybe make that a
4 better "L?" It looks a "b," so there is no confusion for the
5 record, please.

6 Q BY MR. BOBBER: All right.

7 A And then, as the Distribution Center is in the back of the
8 facility, as I mentioned before, there is a second parking lot
9 where the Distribution Center employees park, with then a break
10 room and locker room for them to change in back here in the "N"
11 area here.

12 Q Would you mark that with an "N" as in Nancy?

13 A Yes.

14 Q Okay.

15 HEARING OFFICER PALENCIA: I'm sorry, "N" is the what?

16 THE WITNESS: It is the break room and locker room for the
17 Distribution Center employees.

18 HEARING OFFICER PALENCIA: And when you say Distribution
19 Center employees, are you -- what classifications are you
20 referring to?

21 THE WITNESS: They are Warehouseers, in our terminology.

22 HEARING OFFICER PALENCIA: Okay. So, this would include
23 the production employees; is that correct?

24 THE WITNESS: They are included --

25 HEARING OFFICER PALENCIA: What about your maintenance

1 employees?

2 THE WITNESS: So, the maintenance employees are site-
3 specific, and not functional-specific, so there are in that 114
4 number, there are Mechanics that support that Distribution
5 Center.

6 HEARING OFFICER PALENCIA: So, do they -- do they use what
7 has been designated as letter "M" which is referring to the
8 break room and locker room for Distribution employees?

9 THE WITNESS: I'm not sure -- not all of them. Most --
10 almost all of the Mechanics will come in through "B" and change
11 in the -- there may be a couple that work only back there that
12 do use "N."

13 HEARING OFFICER PALENCIA: Is that based on personal
14 knowledge?

15 THE WITNESS: It is based on having to walk from here to
16 here, versus here to here.

17 HEARING OFFICER PALENCIA: On a given week, how often do
18 you see maintenance employees in the break room, let's say?

19 THE WITNESS: At the most, there is a couple, two.

20 HEARING OFFICER PALENCIA: A couple?

21 THE WITNESS: Maintenance people.

22 HEARING OFFICER PALENCIA: Every day, two days, three days
23 or --

24 THE WITNESS: Most --

25 HEARING OFFICER PALENCIA: -- every four days; which?

1 THE WITNESS: Every day, there will be a couple.

2 HEARING OFFICER PALENCIA: How about in the locker room,
3 in the area "N?"

4 THE WITNESS: I am not sure how many change there.

5 HEARING OFFICER PALENCIA: Have you ever seen any?

6 THE WITNESS: Have I ever -- me personally, no, I have
7 not, no, I have not seen.

8 HEARING OFFICER PALENCIA: Continue.

9 Q BY MR. BOBBER: Mr. Pritchard, as we look at this
10 Employer's Exhibit No. 2 diagram, does this diagram accurately
11 depict the layout of your Bakersfield facility as it exists
12 today?

13 A Yes.

14 Q And from where did you obtain this diagram?

15 A We have an -- engineering drawings in our network computer
16 storage stored, that we can pull up and then print it out.

17 Q And what purpose do you use those plant drawings for?

18 A A variety of things; to show people the entire site, all
19 on one big page. As we go about projects like move this line
20 out and put a new line in, we would cut a smaller piece of the
21 whole diagram so that we can make adjustments to different
22 lines, as well, if we want.

23 Q Okay.

24 MR. BOBBER: All right, Madame Hearing Officer, I would
25 offer into evidence the Employer's Exhibit No. 2.

1 HEARING OFFICER PALENCIA: Any objection?

2 MR. STERN: No.

3 HEARING OFFICER PALENCIA: Hearing no objection,

4 Employer's Exhibit No. 2 is received into evidence.

5 **(Employer's Exhibit No. 2, received into evidence.)**

6 HEARING OFFICER PALENCIA: I am going to go ahead and

7 leave this up, just in case anybody needs to refer to it.

8 You may proceed.

9 Q BY MR. BOBBER: Mr. Pritchard, there was already some

10 reference to the warehouse operations, and I would like the

11 record for the Hearing Officer to be clear about the various

12 businesses on this Bakersfield site.

13 A Yes.

14 Q Would you please describe what is the -- how is the

15 Warehouse group, how is that organized as a business?

16 A So, the Warehouse group which is called our Regional

17 Distribution Center, actually reports into a different Nestlé

18 organization called Nestlé DSD, which stands for Direct Stored

19 Delivery. So, that is really the functional group that gets

20 product from a warehouse to our customers and their consumers.

21 Q And in terms of the profit/loss assessment for your

22 distribution center there is Bakersfield, is -- is there a

23 profit and loss accounting rolled into yours in the facility,

24 or is it something separate?

25 A Their P&L would go into the Nestlé DSD organizational --

1 HEARING OFFICER PALENCIA: And what is P&L?

2 THE WITNESS: Profit and loss.

3 HEARING OFFICER PALENCIA: Okay, thank you.

4 Q BY MR. BOBBER: Other than that RDC, the Regional
5 Distribution Center that you told us about, is there any other
6 particular business group that is housed on this site, that is
7 not part of your Nestlé-Dreyer's Ice Cream?

8 A Yes.

9 Q What is that?

10 A There is a Research and Development, R&D, facility also on
11 site, that is attached to the side of the factory, where Nestlé
12 Worldwide develops new ice cream products. Those people that
13 work in that Research and Development, and also in the
14 Technical Application Group, scientists, those people do not
15 work in the factory. They work next to the factory, but they
16 are in a different organization than the factory.

17 Q And to whom do those people in the Research & Development
18 Center, to whom do they report?

19 A They report into Nestlé Research & Development Worldwide.

20 Q Where is that located?

21 A The ice cream part of it is located in France. The
22 company headquarters is in Vevey, Switzerland.

23 Q Would you please describe, Mr. Pritchard, the general
24 hours of the operation at your Bakersfield facility?

25 A In general, we work 24 hours a day, seven days a week.

1 Not all of the Business Units and lines within the factory work
2 24/7, but the factory works 24/7. We have a three-shift
3 operation that runs through those seven days a week.

4 Q And you have made some reference to Business Units. Do
5 you divide your business at Bakersfield according to Business
6 Units?

7 A Yes, so within that pink-circled area, we divide all of
8 the production lines into three basic Business Units.

9 Q What are those, sir?

10 A East Business Unit, West Business Unit, and a third
11 Business Unit we call DAP, which stands for Dibs and Packaged
12 Business Unit.

13 Q So, D-A-P?

14 A Yes.

15 Q Okay. And what products does the East Business Unit make?

16 A The East Business Unit would make predominantly cones,
17 what we top ball-top cone, Drumstick™, as well as a flat-top
18 cone which would be a Big Cone™ or SkinnyCow™ cone, as well as
19 Push-Ups™, regular sandwiches, and our bulk three-gallon food
20 service product.

21 Q How about the West Business Unit? What products does it
22 make?

23 A West Business Unit makes two basic formats; barred
24 products so both a paddle and a bullet with a stick in it bar,
25 a wider bar and a skinny bar, as well as what we call an

1 extruded sandwich, which would be SkinnyCow™ sandwiches and
2 Toll House Cookie™ sandwiches.

3 Q And the DAP Business Unit, DAP; what products does it
4 make?

5 A In the third Business Unit, DAP would be all of our
6 packaged business so the classic Grand, Slow-Churned, and 48-
7 ounce product that is on the top of Exhibit 1, as well as Dibs
8 which is in the upper left-hand corner of the snack products on
9 Exhibit 1, and our new line which is a shakes and smoothie
10 line.

11 [Long pause.]

12 Q Mr. Pritchard, I am handing you a multi-page document
13 marked Employer's Exhibit No. 3.

14 **(Employer's Exhibit No. 3, marked for identification.)**

15 Q BY MR. BOBBER: Would you please look at this and tell us
16 what this is, if you know?

17 A Yes, this is the organizational charts for all of the
18 functional teams within the factory.

19 MR. BOBBER: Yes, ma'am?

20 HEARING OFFICER PALENCIA: Before we proceed, are you
21 going to be referring to particular pages in this exhibit? If
22 you are, I think we could mark it as 3(a) and --

23 MR. BOBBER: Yes, let's do that.

24 HEARING OFFICER PALENCIA: Okay.

25 MR. BOBBER: So, 3(a) from the title page?

1 HEARING OFFICER PALENCIA: Right.

2 MR. BOBBER: Okay.

3 [Long pause.]

4 MR. BOBBER: My lettering went (a) through (l)?

5 HEARING OFFICER PALENCIA: Yes.

6 MR. BOBBER: Good.

7 Q BY MR. BOBBER: Okay, so Mr. Pritchard, can we start with
8 the second page of the document, Page 3(b), and would you
9 explain to us what this shows?

10 A Okay, 3(b) is what we call the leadership team, which
11 would be the managers who report to me as the Plant Manager.
12 The eight on the bottom row are the direct reports that I have,
13 Manufacturing Manager, Tech Ops Manager, Head of Finance,
14 Quality Systems Manager, Environmental Health and Safety
15 Manager, HR Manager, Pre-Manufacturing Manager, and an NCE
16 Manager.

17 Q Okay, let me ask you about a couple of these things.

18 First of all, are the names of the people referenced for
19 each of those functions still current as we sit here today?

20 A The Technical Operations Manager, Sammy Yoshida has moved
21 into a different role, so that is an open position right now.

22 Q Currently, you don't have a Tech Ops Manager?

23 A Correct.

24 Q Okay, other than that change, are the rest of the names
25 and functions accurate as of today?

1 A Yes.

2 Q You told us of a Pre-Manufacturing Manager. What is Pre-
3 Manufacturing, sir?

4 A Pre-Manufacturing is all of the functions that basically
5 support our ability to make ice cream, so it is everything from
6 ordering of materials and ingredients to receiving in the Dry
7 Warehouse, to planning the production, to ordering and
8 receiving our liquid dairy and sweeteners that we need to make
9 ice cream, and then taking all of that and mixing it to where
10 we have a mix that is ready for manufacturing.

11 Q The last -- furthest right reference is to an NCE Manager.
12 For now, can you just tell us what NCE stands for?

13 A NCE stands for Nestlé Continuous Excellence.

14 Q Okay, and that is a business initiative?

15 A Yes.

16 Q I am going to ask you about that a little later.

17 Above the eight functions and people near the bottom of
18 this page, there is a reference to Kelly Peters, RDC Manager,
19 with a dotted line over to you. Would you explain that?

20 A So, the -- Kelly is the Regional Distribution Manager,
21 Distribution Center Manager. He physically reports into that
22 Nestlé Direct Store Delivery and DSD organization, but as the
23 Facility Manager, she still has a dotted line into me, because
24 I am the overall senior manager on the site, and we support
25 through our services that operation.

1 Q I see. And then, in this Exhibit No. 3, the subsequent
2 pages, 3(c) through 3(1), are those just individual pages
3 referencing each of these eight functions that we see on 3(b),
4 plus the RDC?

5 A Correct.

6 Q Let's turn then to 3(c), and let me ask you about
7 Manufacturing.

8 HEARING OFFICER PALENCIA: Before we move on --

9 MR. BOBBER: Yes, ma'am?

10 HEARING OFFICER PALENCIA: -- to 3(c), just so we can keep
11 the record clear, and this may be obvious to you, but I have to
12 make sure it is clear for the record, let's go back to -- 3(a)
13 here, the cover page, says that it was updated May 6th, 2011,
14 so is that when it was updated that -- Exhibit 3(a) through
15 3(1), do you know?

16 MR. STERN: I am going to object to that question; lacks
17 foundation. Sorry.

18 HEARING OFFICER PALENCIA: Let's move on; 3(b). I just
19 want to go through the initials, okay --

20 THE WITNESS: Yes.

21 HEARING OFFICER PALENCIA: -- to make sure it is clear.

22 THE WITNESS: Yes.

23 HEARING OFFICER PALENCIA: Okay, BOC Plant Manager; BOC
24 refers to?

25 THE WITNESS: Bakersfield Operations Center.

1 HEARING OFFICER PALENCIA: And that is the facility at
2 issue.

3 Okay. I believe you have already -- I believe you have
4 been asked, but RDC refers to?

5 THE WITNESS: Regional Distribution Center.

6 HEARING OFFICER PALENCIA: Okay, that is for Kelly Peters,
7 and for Neha Shah?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: Okay, just a minute; no need
10 for clarification on that.

11 Okay, for Sammy Yoshida, Tech Ops Manager; is that
12 Technical --

13 THE WITNESS: Technical Operations, yes.

14 HEARING OFFICER PALENCIA: Okay, for Greg Clark, EHS
15 Manager. What does EHS stand for?

16 THE WITNESS: Environment Health and Safety.

17 HEARING OFFICER PALENCIA: And then Norma McFaddin, HR,
18 that is for Human Resources, correct?

19 THE WITNESS: Correct.

20 HEARING OFFICER PALENCIA: And I believe we have got MCE
21 for John Durre.

22 THE WITNESS: Yes.

23 HEARING OFFICER PALENCIA: Okay, you may proceed.

24 Q BY MR. BOBBER: So, Mr. Pritchard, would you turn please
25 to Page 3(c) --

1 A Uh-huh.

2 Q -- with the heading "Manufacturing," and would you explain
3 what is the organization or the structure of the Manufacturing
4 function?

5 A Page (c) is the direct reports of the Manufacturing
6 Manager, so there is the three Business Unit Managers on the
7 left-hand side, and then the right-hand five people are called
8 Process Engineers, so they are salaried professionals who go
9 out and work on improvement projects within the manufacturing
10 operation.

11 Q Mr. Pritchard, I see on the Business Units on this page,
12 reference to the East, which you told us about earlier, and
13 reference to the DAP, which you told us about earlier, but is
14 there a Business Unit Manager for West?

15 A At the time that this was put together, no, so we had a
16 third-shift Business Unit Manager instead, so we have done some
17 adjusting since then.

18 Q And who is the West Business Unit Manager?

19 A We are short of Business Unit Managers, so technically
20 speaking at the moment, no one.

21 Q Understood, okay.

22 [Long pause.]

23 Q And the production employees within the structure of this
24 organization that we are looking at in Exhibit No. 3, the
25 production employees would be housed in which function?

1 A The production employees would be within either the
2 manufacturing or pre-manufacturing functions.

3 Q And the maintenance employees would be in which function?

4 A They would be in the Technical Operations function, Page
5 (e).

6 Q Okay, let me ask you about that one then.

7 With reference to Page 3(e) of your organizational chart,
8 would you explain how you -- how the -- how management is
9 organized within that function, the Technical Operations
10 function?

11 A The Technical Operations Manager basically has three main
12 groups within their management. One is the Maintenance team,
13 so the Maintenance Manager then has the front-line supervisors
14 who basically supervise the Mechanics, and those Mechanics and
15 those supervisors are divided up amongst the Business Units to
16 support each of the Business Units.

17 The other two functions as a New Products Manager and an
18 Engineering Manager, which are kind of the office people, if
19 you will.

20 HEARING OFFICER PALENCIA: Your reference to Mechanics,
21 are you referring to maintenance employees?

22 THE WITNESS: Yes, so the maintenance employees are within
23 the Maintenance Manager's control.

24 HEARING OFFICER PALENCIA: You may proceed.

25 Q BY MR. BOBBER: Would you give us a little more

1 explanation of the reference that you made a moment ago, Mr.
2 Pritchard, to the Maintenance Mechanics being assigned to the
3 Business Units?

4 A Yes. So, if you look at Page 3(e), each of the
5 supervisors who are under Roy Beyeler's Maintenance Manager
6 position, there is a supervisor for Cone and a supervisor for
7 DAP. Supervisor Rollo is part of West Snacks, so the first
8 three are specifically assigned to Business Units. John
9 Shealey kind of has the all-other maintenance function, so
10 Facilities and the Distribution Center, as well as Palletizing,
11 as well as the -- the -- well, I said Facilities, and then
12 again, the two Daves are also on off-shifts that help cover the
13 24-hour operation.

14 Q Can you give us -- well, let me ask you this way:

15 In terms of the hourly maintenance employees, do they have
16 particular job assignments under the supervision of any of the
17 particular supervisors here? How does that work?

18 A Yes, so I would use Chris Tovar as an example. Supervisor
19 - Cones, that is an East Snacks Business Unit, so all of the
20 Mechanics who work for Chris Tovar then are supporting and
21 maintaining the equipment within the East Business Unit Cone
22 lines.

23 Q And so when they come to work each day, they go the East
24 Business Unit and work there?

25 A Yes.

1 Q How many production lines do you have in that East
2 Business Unit?

3 A Eleven.

4 Q Approximately eleven?

5 A Approximately eleven.

6 Q And do you know off the top of your head how many of the
7 maintenance employees that we are talking about in this hearing
8 are assigned to jobs in that East Business Unit?

9 A No, I don't recall.

10 Q Okay, I will ask other witnesses.

11 And then, is the same true for your DAP Business Unit,
12 that there are specific maintenance employees assigned
13 specifically to that Business Unit?

14 A Yes. So, under the DAP Supervisor, there would be
15 Mechanics who work in DAP.

16 Q Approximately how many production lines do you have in
17 that DAP unit?

18 A Seven product lines in DAP.

19 HEARING OFFICER PALENCIA: And DAP refers to?

20 THE WITNESS: Dibs and Packaged.

21 HEARING OFFICER PALENCIA: Thank you.

22 Q BY MR. BOBBER: And then, is it also true that you have
23 maintenance employees specifically assigned to jobs in the West
24 Business Unit?

25 A Yes. There are eight lines within the West Business Unit.

1 HEARING OFFICER PALENCIA: And where is the West Business
2 Unit in 3(e)?

3 THE WITNESS: It is a combination of the -- Gerald
4 Cleveland works as -- where it says Rollos, those are the bar
5 lines, and Dave Herren works as Line 6.

6 HEARING OFFICER PALENCIA: So then, the West Unit is then
7 overseen by Gerald Cleveland and David Herren?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: Thank you.

10 Q BY MR. BOBBER: Let me ask you next then about the
11 Supervisor, John Shealey and his area of responsibility is
12 Facilities and the Distribution Center?

13 A And the Palletizing area, yes.

14 Q And the Palletizing. Do you have maintenance employees
15 who are at issue in this case, that are assigned specifically
16 to any of those functions?

17 A Yes, both Facilities and RDC and Palletizing, there are
18 specific Mechanics, maintenance members assigned to each of
19 those three groups.

20 Q And can you give us an approximation of how many people we
21 are talking about?

22 A I would be guessing.

23 Q No, don't guess.

24 A I couldn't answer.

25 Q You don't need to be guessing. I will ask another

1 witness.

2 HEARING OFFICER PALENCIA: When we say Palletizing, the --
3 and I apologize for my ignorance, but you know, again, I am not
4 familiar with -- with the facility, and the person reading the
5 record, I can't assume they would be familiar with the
6 operations.

7 THE WITNESS: Uh-huh.

8 HEARING OFFICER PALENCIA: Okay, Palletizing, that area is
9 overseen by -- let's look at 3(e), and that would be John --

10 THE WITNESS: Shealey.

11 HEARING OFFICER PALENCIA: -- Shealey.

12 THE WITNESS: Yes.

13 HEARING OFFICER PALENCIA: And is there any -- and
14 underneath the word "Supervisor," we have Facilities, RDC
15 referring to?

16 THE WITNESS: The Distribution Center.

17 HEARING OFFICER PALENCIA: Okay, and then PAL refers to?

18 THE WITNESS: Palletizing.

19 HEARING OFFICER PALENCIA: Okay, and anyone else who
20 oversees that area?

21 THE WITNESS: No, John does those three.

22 HEARING OFFICER PALENCIA: And where is this area?

23 THE WITNESS: Palletizing?

24 HEARING OFFICER PALENCIA: Palletizing, in --

25 THE WITNESS: J-1 and J-2 on the Exhibit No. 2.

1 HEARING OFFICER PALENCIA: And in reference to the East
2 Snack Unit, how -- is that right, left?

3 THE WITNESS: If you will look at the map, this is the
4 East side, this is the West side of the building [indicating].
5 East Snacks is going to be in the east, and DAP, that is over
6 here.

7 Do you want --

8 HEARING OFFICER PALENCIA: Yes, let's mark it.

9 THE WITNESS: So --

10 HEARING OFFICER PALENCIA: Do you have a black marker?
11 You can write "East Snacks" or --

12 THE WITNESS: So, in the East are five cone lines, two
13 Push-Up™ lines, two sandwich lines, and a bulk line for 3-
14 gallons.

15 HEARING OFFICER PALENCIA: And you have marked that area
16 in black, and you wrote East, and is that considered like the
17 East Unit, or is that --

18 THE WITNESS: That is the East Business Unit.

19 HEARING OFFICER PALENCIA: Can you write "East Business
20 Unit?"

21 [Witness complies]

22 HEARING OFFICER PALENCIA: Thank you.

23 So, where would be the Palletizing area?

24 THE WITNESS: So, J-1 Palletizing area does all of the
25 East and West.

1 HEARING OFFICER PALENCIA: Okay. When you say "does,"
2 what does that mean?

3 THE WITNESS: Palletizing -- so the product from the East
4 and West is going to come out as a box, so we want to take all
5 of the individual boxes and stick them on a pallet so that we
6 can load it on a truck and send it to a --

7 HEARING OFFICER PALENCIA: So, are you --

8 THE WITNESS: -- Distribution Center.

9 HEARING OFFICER PALENCIA: -- saying that all of the --
10 those boxes from East and West are taken to J-1, the
11 Palletizing area?

12 THE WITNESS: Yes, so there are conveyors that will move
13 it to this set of machines that will put it onto a pallet.

14 HEARING OFFICER PALENCIA: And where is your West Unit?

15 THE WITNESS: West is then --

16 HEARING OFFICER PALENCIA: So, the witness is marking --
17 just mark the area "West Business Unit" in Employer's Exhibit
18 No. 2, and the testimony he has been giving with regards to the
19 questions being asked by the Hearing Officer refer to
20 Employer's Exhibit No. 2.

21 Thank you.

22 MR. BOBBER: And for the sake of completeness, should we
23 also circle and identify the DAP Business Unit?

24 HEARING OFFICER PALENCIA: Do we have a yellow marker?

25 [Long pause.]

1 HEARING OFFICER PALENCIA: So, what area would you like
2 the witness to mark?

3 MR. BOBBER: The DAP, the third Business Unit.

4 [Witness complies.]

5 MR. BOBBER: Thank you, Mr. Pritchard.

6 Q BY MR. BOBBER: Mr. Pritchard, I had asked you about --

7 HEARING OFFICER PALENCIA: I'm sorry, let the record
8 reflect that you marked the Palletizing Area -- you used a
9 yellow highlighter to mark that area, correct, and --

10 THE WITNESS: Yellow --

11 HEARING OFFICER PALENCIA: -- then you identified that
12 area?

13 THE WITNESS: Yes, yellow marks the DAP Business Unit.

14 HEARING OFFICER PALENCIA: Okay.

15 THE WITNESS: And then, J-2 would be the palletizing area
16 for DAP.

17 HEARING OFFICER PALENCIA: Thank you.

18 Please proceed.

19 Q BY MR. BOBBER: I had asked you, Mr. Pritchard, about
20 Maintenance employees being assigned to the particular Business
21 Units, and I want to ask you the same question, but with
22 respect to Production employees.

23 At your facility, do Production employees have an
24 assignment -- a particular job assigned to a particular
25 Business Unit?

1 A Yes.

2 Q How does that work?

3 A All of the Production employees are assigned to a Business
4 Unit first, a shift second, and then a line third, so you would
5 be either Line 1 in West Business Unit on first shift, for
6 instance, and so each of the shifts, each of the lines, and
7 each of the Business Units have specific production employees
8 assigned to each of them.

9 Q Do you run production on third shift?

10 A It depends on the Business Unit. Some of the business --
11 the Dibs and Packaged Business Unit runs up to a 72-hour cycle
12 straight, so we are running production conceivably 24 hours at
13 a time.

14 The Snack lines typically run two shifts, and then some
15 part of third shift, and then we clean on the rest of the third
16 shift.

17 Q Do you have job titles that you use for the Production
18 employees that are assigned to these production Business Units
19 of West, East, and DAP?

20 A Yes, there is an Ice Cream Maker I and an Ice Cream Maker
21 II. Those are -- are two level production workers.

22 Q Okay. Is there something also known as a Mix Maker?

23 A Yes, and --

24 Q And what is that?

25 A A Mix Maker is -- before you package it into ice cream, we

1 need to produce the mix, so it is the person that works to
2 actually blend the ingredients to make the mix.

3 Q And in terms of the Ice Cream Maker I and the Ice Cream
4 Maker II that you referred to, is one of those jobs considered
5 to be the more advanced job?

6 A The Ice Cream Maker II job is the higher skilled job, so
7 they are kind of the lead operator of the line, so they know
8 how to run all of the different pieces of equipment on the
9 line, whether it is a freezer or a filler or a wrapper.

10 Q So, in looking at the staffing for a Business Unit, you
11 have the production employees that would be assigned to a
12 particular line within the Business Unit.

13 A Correct.

14 Q But maintenance employees who are assigned to that
15 Business Unit work across the various lines of the Business
16 Unit?

17 A Yes. They aren't necessarily attached to one specific
18 line, but they are attached to the lines within the Business
19 Unit.

20 Q And by "attached," what do you mean?

21 A They are subject to call help and support any and all of
22 the lines within that Business Unit.

23 Q I want to back up to something that you referred to
24 earlier in walking us through the diagram, and you referenced
25 the locker rooms and people changing clothes and putting on

1 PPE, and I want to ask you a few questions about that.

2 A Okay.

3 Q What -- let's take a production employee.

4 A Uh-huh.

5 Q An Ice Cream Maker; what clothing is that person required
6 to put on when they come to work?

7 A A uniform, so a shirt and pants and safety shoes with
8 steel tips, and then the Personal Protective Equipment then on
9 top of that would be hairnet, ear plugs, glasses, beard guard
10 if you need it, and hard hat.

11 Q And they do the clothes and shoe changing in the locker
12 room that you pointed out to us?

13 A In the locker room or you put your hat and ear plugs on as
14 you walk down the hallway before you get to the door to go into
15 Production.

16 Q And does the Company launder those uniforms and have them
17 available at the plant for employees, or do they bring them
18 home?

19 A No, the uniforms stay on-site and go directly to the
20 vendor we use to clean the uniforms.

21 Q So, I take it at the end of the shift, employees change
22 out of that uniform back into their street clothes and hit the
23 road?

24 A Correct.

25 Q How about with respect to the maintenance employees? Do

1 they also have requirements for uniform and Personal Protective
2 Equipment?

3 A Everything is the same. Really the only difference is the
4 color of the shift.

5 Q What color of shirts --

6 A Dark blue shirt for a Mechanic versus a lighter blue color
7 for Ice Cream Maker.

8 Q And in terms of the process by which employees do the
9 changing, is there any difference between the Maintenance
10 Mechanics process and the production employees process?

11 A No.

12 MR. STERN: I am going to object; vague and ambiguous. Is
13 he asking whether Maintenance employees put on their pants
14 differently than Production employees? I don't understand the
15 question.

16 HEARING OFFICER PALENCIA: Do you want to rephrase to
17 clarify?

18 MR. BOBBER: Sure.

19 HEARING OFFICER PALENCIA: Please.

20 Q BY MR. BOBBER: Do the Maintenance employees use the same
21 locker room for the clothes changing as do the Production
22 employees?

23 A Yes.

24 Q And do they -- do the Maintenance employees obtain
25 Personal Protective Equipment like the hairnets and safety

1 glasses from the same places where Production employees obtain
2 those things?

3 A There is one Production Supply Office where all of that
4 Personal Protective Equipment stuff is located to get.

5 Q And how about the uniforms? Where do the employees obtain
6 those?

7 A They are put into their lockers.

8 HEARING OFFICER PALENCIA: Who puts them into their
9 lockers?

10 THE WITNESS: The uniform company.

11 Q BY MR. BOBBER: Are the hourly employees required to
12 document their work time through use of a time clock?

13 A Yes.

14 Q They punch a time clock?

15 A Correct.

16 Q How many time clocks do you have?

17 A Two in the main employee entrance hallway, and then one
18 more in the back for the RDC.

19 HEARING OFFICER PALENCIA: And for clarification, your
20 maintenance employees are all hourly employees; is that
21 correct?

22 THE WITNESS: Correct.

23 HEARING OFFICER PALENCIA: And your production employees
24 are all hourly employees; is that correct?

25 THE WITNESS: Correct.

1 Q BY MR. BOBBER: And with respect to the two time clocks in
2 that main entrance area, do maintenance employees use those?

3 A Yes.

4 Q And production employees?

5 A Yes.

6 Q Can an employee use either of the two?

7 A Yes, it is just whichever one doesn't have somebody in
8 front of it.

9 HEARING OFFICER PALENCIA: And do they use the two?

10 THE WITNESS: Yeah, they are literally right next to each
11 other.

12 Q BY MR. BOBBER: My point being, you don't have one for
13 Maintenance and one for Production, do you?

14 A No.

15 Q Okay. Do you have a break room facility that employees
16 can use?

17 A Yes, there is one in the factory side of the building and
18 one on the Distribution side of the building.

19 Q All right, and who uses the one on the factory side of the
20 building?

21 A Well, all of the factory people, so Maintenance,
22 Production, office all use the factory break room, lunchroom.

23 Q Within your group of maintenance employees, Mr. Pritchard,
24 we talked some about maintenance employees assigned to the --
25 to any of the three Business Units, but in addition to those,

1 you have other maintenance employees, right?

2 A Yes.

3 Q And what functions do they serve?

4 A The other functions that are served by other maintenance
5 people, the largest group is what we call the Utilities Group,
6 so they are the Mechanics that are specifically assigned to
7 maintain our ammonia system and basically all of the services,
8 utilities, that support the building and the equipment in the
9 building; boilers -- boilers and ammonia, for the most part.

10 Q Okay. And other than those utilities -- Utilities
11 Maintenance people, you also have some Shop Maintenance people?

12 A Yes.

13 Q Would you describe them?

14 A So there is kind of two groups of shop people. There is
15 one group that really is called a machine shop, so they have
16 the equipment that can basically fabricate a part, as well as
17 each of the Business Units has a smaller shop where they can do
18 quick repairs, if you will, when something breaks on a line.
19 The Business Unit shops are located right off of the Business
20 Units, lines, so they can get in and out quickly.

21 Q When -- I want to ask you a few questions about the
22 maintenance employees that are assigned to any of the three
23 Business Units. So, let's be specific -- less general than
24 that. Let's talk about the East Business Unit, East Snacks
25 Business Unit.

1 A Okay.

2 Q Explain to us how does a maintenance employee who has his
3 or her assignment in the East Business Unit, how do they know
4 what to do at work, on any given day?

5 A It is through a series of three or four things. One, we
6 would -- as a shift is leaving and a shift is coming on, there
7 is what we call a shift hand-off, and during that shift hand-
8 off, the leaving Mechanic would say, "These are the things I
9 was working on. I got to fix this, fixed this, but I didn't
10 get to this one," so that then the new guy coming in knows what
11 to go work on first.

12 Two, there would be what we would call preventative
13 maintenance items, action items, PM's, that would be either a
14 daily, weekly, or monthly maintenance task that we -- that the
15 computer maintenance system would spit out and say, "Today is
16 the day to do this task," and so you would have -- they would
17 get a list or a bunch of sheets saying, "These are the PM's you
18 need to do today."

19 Then, the third thing would be if there is a breakdown on
20 the line, you may then -- the supervisor or the Ice Cream Maker
21 may say, "I need your help to help me figure out what is wrong
22 with this line and get it started."

23 Those would be kind of the three major buckets, I guess,
24 of how they get work.

25 Q And in that last reference, when you referred to a

1 supervisor, is it true that a Production Supervisor could give
2 direction to a maintenance employee?

3 MR. STERN: Objection, leading, and that is a particularly
4 bad leading question because this is getting to the crux of the
5 case. I object.

6 HEARING OFFICER PALENCIA: Do you want to reword?

7 MR. BOBBER: Sure.

8 Q BY MR. BOBBER: Can you describe the extent to which any
9 Production Supervisors give direction to Maintenance Mechanics
10 in their Business Unit?

11 MR. STERN: Same objection; also assumes facts not in
12 evidence, and I hope that the Decision-Maker takes this into
13 account when they are making their decision.

14 HEARING OFFICER PALENCIA: So, what I would like to do is
15 get some background knowledge. How does this person have
16 knowledge of that, and whether he oversees these employees, and
17 then maybe I think we can just start with background facts, and
18 then get into the specifics.

19 MR. BOBBER: I'm sorry, I am not following. It is already
20 in the record that as the Facility Manager, the Maintenance
21 Manager who oversees Maintenance Supervisors reports to Mr.
22 Pritchard, and on the Production side, the Manufacturing
23 Manager who oversees the Production Supervisors reports to Mr.
24 Pritchard.

25 HEARING OFFICER PALENCIA: Give me your question again.

1 MR. BOBBER: Would he describe the extent to which
2 Production Supervisors in a Business Unit provide direction to
3 the maintenance employees who are assigned to that Business
4 Unit.

5 HEARING OFFICER PALENCIA: Okay, let's go to Board Exhibit
6 -- I want to look at one of the exhibits which talks about the
7 supervisors we are referring to, and then I want to ask some
8 questions before that.

9 Let's go to -- which managers are you referring to, or
10 would like to talk about?

11 MR. BOBBER: I asked him about Production Supervisors.

12 HEARING OFFICER PALENCIA: And Production Supervisors are
13 -- they are named in Employer's Exhibit No. 3 but I am not sure
14 which --

15 MR. BOBBER: 3(d).

16 HEARING OFFICER PALENCIA: 3(b) or (d)?

17 MR. BOBBER: 3(d).

18 HEARING OFFICER PALENCIA: Thank you.

19 [Long pause.]

20 HEARING OFFICER PALENCIA: I would like to direct your
21 attention to Exhibit 3(d), and in 3(d), is it correct to say
22 that you are responsible for overseeing all of these
23 individuals on 3(d), named in 3(d)?

24 THE WITNESS: Yes. I mean, the Manufacturing Manager
25 reports to me, and she manages those people, but everybody

1 else.

2 HEARING OFFICER PALENCIA: And are you familiar with the
3 job responsibilities of the Manufacturing Manager?

4 THE WITNESS: Yes.

5 HEARING OFFICER PALENCIA: Are you familiar with the job
6 responsibilities of those people below the Manufacturing
7 Manager?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: And how is it that you are
10 familiar with them?

11 THE WITNESS: The supervisors or the --

12 HEARING OFFICER PALENCIA: The supervisors.

13 THE WITNESS: A) when we have open positions, we create a
14 position description. B) I am on the interview team that
15 interviews candidates so that we go through whatever skills and
16 abilities we need for that role. C) I am part of the Weekly
17 Operation Reviews where we would talk about the results from
18 Manufacturing. And way back when, I did that a long time ago.

19 HEARING OFFICER PALENCIA: And we have three Business
20 Units, correct?

21 THE WITNESS: Correct.

22 HEARING OFFICER PALENCIA: And I just want to clarify for
23 the record before we continue, because I am a little bit
24 confused; I apologize. Okay, production employees, this
25 consists of three types of employee; is that correct? We are

1 talking about Ice Cream Maker I, Ice Cream Maker II, and then
2 your Mix Maker; is that correct?

3 THE WITNESS: Correct.

4 HEARING OFFICER PALENCIA: Okay, and then -- and then your
5 maintenance employees, these consist of the Utility Group?

6 THE WITNESS: Yes.

7 HEARING OFFICER PALENCIA: And then your Shop employees?

8 THE WITNESS: And line Mechanics within --

9 HEARING OFFICER PALENCIA: Line Mechanics? When you say
10 -- are these line Mechanics, they are the shop employees,
11 correct?

12 THE WITNESS: No.

13 HEARING OFFICER PALENCIA: They are a different group?

14 THE WITNESS: Yes.

15 HEARING OFFICER PALENCIA: In your testimony, you said
16 that there were two groups under shop employees.

17 THE WITNESS: What I meant was that there are two
18 locations for shops.

19 HEARING OFFICER PALENCIA: Okay, there are two locations
20 for shops, and what are those two locations?

21 THE WITNESS: One is -- is -- we would call it a typical
22 machine shop where they can fabricate new parts, and all -- so
23 they have expertise in the particular equipment that builds or
24 manufactures parts. The shops that are located with Business
25 Units are more repair shops, if you will, that take something

1 that broke or cracked and fixed it.

2 HEARING OFFICER PALENCIA: And each Business Unit has its
3 own shop? Okay, okay, is there another group that you are
4 referring to, so you have got the people that work at the
5 machine shop.

6 THE WITNESS: Correct.

7 HEARING OFFICER PALENCIA: Where does the other group work
8 at?

9 THE WITNESS: The line Mechanics are at the Business Unit
10 shop. Business Unit shops are there, for the most part, so if
11 a line Mechanic has a problem with a part, they can go
12 somewhere close to the line to make a repair.

13 HEARING OFFICER PALENCIA: Okay, so Maintenance employees,
14 you have the utility groups, you have the employees working at
15 the machine shops, and then you have got the line Mechanics.

16 THE WITNESS: Correct.

17 HEARING OFFICER PALENCIA: These are the people that come
18 to the line; is that correct, and assist?

19 THE WITNESS: Correct.

20 HEARING OFFICER PALENCIA: Okay.

21 [Long pause.]

22 HEARING OFFICER PALENCIA: Let's go off the record.

23 (Off the record.)

24 HEARING OFFICER PALENCIA: Back on the record.

25 Go ahead and ask your question again, and let me -- if

1 there is an objection, please state your objection for the
2 record, and then -- go ahead.

3 Q BY MR. BOBBER: From the Company's perspective, do the
4 Production Supervisors have the authority to provide any
5 direction to Maintenance Mechanics?

6 MR. STERN: Objection, lacks foundation.

7 HEARING OFFICER PALENCIA: Direction -- do you want to
8 explain what direction you are referring to?

9 MR. BOBBER: Direct work duties; instruct to perform work
10 duties.

11 HEARING OFFICER PALENCIA: Let's be specific -- when you
12 are saying "direct," responsibly direct, if we can get specific
13 examples.

14 MR. BOBBER: Well, if --

15 HEARING OFFICER PALENCIA: So there is no legal
16 conclusion.

17 MR. BOBBER: Yes, ma'am. I am just laying foundation
18 because if the witness confirms and says, yes, that they do
19 have the authority, then I would ask what types.

20 HEARING OFFICER PALENCIA: Yeah, let's go into specifics
21 because the first question could be like a legal conclusion. I
22 would like to have examples for the record.

23 You are objecting to the question; is that correct?

24 MR. STERN: Yes.

25 HEARING OFFICER PALENCIA: I am going to go ahead and

1 allow the question.

2 THE WITNESS: If there is a specific issue on the line,
3 the Production Supervisor has the ability to call over a
4 Mechanic to address the issue and help diagnose, troubleshoot,
5 and/or fix the problem on the line.

6 Q BY MR. BOBBER: And to be specific about that, in your
7 facility, what work duties can the Production Supervisor
8 instruct the Maintenance Mechanic to perform?

9 MR. STERN: Objection; assumes facts not in evidence and
10 lacks foundation.

11 So far the testimony is that he can call somebody over on
12 an issue. That is all -- that is apples and oranges, the next
13 question. There is no foundation for that question, so I
14 object.

15 HEARING OFFICER PALENCIA: Repeat your question.

16 MR. BOBBER: And to be specific in this regard what work
17 duties can a Production Supervisor at the facility instruct a
18 Maintenance Mechanic to perform?

19 MR. STERN: Same objection.

20 [Long pause.]

21 HEARING OFFICER PALENCIA: Before addressing that
22 question, can -- to your knowledge, to your personal knowledge,
23 can a Production Supervisor ask a maintenance employee to
24 perform a task?

25 THE WITNESS: A Production Supervisor can ask a

1 maintenance employee to perform a task, yes.

2 HEARING OFFICER PALENCIA: And how are you aware of it?

3 THE WITNESS: I have seen Production Supervisors ask a
4 Mechanic to go help figure out what is wrong with Line 12.

5 HEARING OFFICER PALENCIA: Go ahead and ask your question.

6 Q BY MR. BOBBER: And then, I am just drilling down for
7 specifics. What types of things in your facility do Production
8 Supervisors instruct Maintenance Mechanics to do?

9 A An example would be, we have been throwing away fifty
10 pounds of ice cream for the last two hours. "We can't figure
11 out what is wrong with the wrapper that is causing us to throw
12 out all of that ice cream. Can you please go look at the
13 wrapper to see if there is something wrong, and figure out how
14 to fix it so we don't throw away the ice cream?"

15 HEARING OFFICER PALENCIA: Has that actually happened?

16 THE WITNESS: Yes.

17 HEARING OFFICER PALENCIA: When did that happen?

18 THE WITNESS: Almost every day. On different lines, our
19 lines don't run perfect. When our lines don't run, we have a
20 limited number of Mechanics. If they are -- as I mentioned
21 before, if they are working on their PM's, they may not know
22 that Line 12 has a problem, so if a Production Supervisor
23 happens to see a Mechanic, they have the ability to ask, "I
24 know you are working on PM's but can you go help us figure out
25 what is wrong with Line 12," and they would go do that.

1 HEARING OFFICER PALENCIA: And how would you become aware
2 of this?

3 THE WITNESS: Through what we call our Operational
4 Reviews, which are our -- every day, we review the performance
5 of all of our lines and talk about what issues we had. So, if
6 today's Operational Review talked about Line 12's wrapper was a
7 problem, we would then do a deeper dive to get to the root
8 cause of that problem.

9 HEARING OFFICER PALENCIA: And when you say Operational
10 Reviews, are you referring to a meeting?

11 THE WITNESS: Yes.

12 HEARING OFFICER PALENCIA: These are dialing meetings, and
13 are all supervisors underneath you required to attend these
14 meetings, to your knowledge?

15 THE WITNESS: They are required to go to a Operational
16 Review; not every one, but each of the Business Units has
17 several Operational Reviews. The supervisors need to go to one
18 of those Operational Reviews, yes; at least one.

19 HEARING OFFICER PALENCIA: Continue.

20 Q BY MR. BOBBER: In a particular Business Unit, do the
21 production employees, Ice Cream Makers, in the Business Unit
22 interact with the line Mechanics who are assigned to that
23 Business Unit?

24 A Yes.

25 Q And in what ways do they interact?

1 A Both in terms of education; the line Mechanics tend to
2 know more about the equipment, so if the Ice Cream Maker would
3 have a question about why is it doing this, or why does it
4 sound like that, their first response would be to find a
5 Mechanic and ask, "Why is it doing this," because the Mechanic
6 tends to have a little more specific equipment knowledge.

7 If there is something not working right, they will have a
8 dialogue between the Ice Cream Maker and the Mechanic, so that
9 they can try to get to, again, what is the root cause of why it
10 is not working right.

11 HEARING OFFICER PALENCIA: To your knowledge, where would
12 -- would the Mechanic go to their supervisor on this issue, to
13 their direct supervisor?

14 THE WITNESS: It would depend on their workload at that
15 time. Yes, they would if they had a list of things that they
16 needed to get done and they weren't going to get them done,
17 then they would go, you know, "Help me figure out which one of
18 these things I can do first, second, or third."

19 HEARING OFFICER PALENCIA: In your knowledge, could the
20 production employee go to the line Mechanic without first
21 consulting with someone above them?

22 THE WITNESS: Yes.

23 Q BY MR. BOBBER: Do you have any Maintenance Supervisors on
24 second shift?

25 A Yes.

1 Q How many?

2 A One full-time, and two part of the time.

3 Q Explain what you mean by part of the time.

4 A We have to cover 24 hours in a day, so we have the largest
5 percentage of supervisors -- are on day shift, but some of them
6 start when it is still dark out, at 2:00 in the morning, and so
7 their day ends in the middle of the first shift. We have got
8 others that start later on first shift and work into second
9 shift. We have got one that starts on second shift and works
10 through until midnight, and again, we have got one that comes
11 in late second shift and works through the night.

12 HEARING OFFICER PALENCIA: And who is your full-time
13 maintenance supervisor?

14 THE WITNESS: Well, they are all --

15 HEARING OFFICER PALENCIA: Their name?

16 THE WITNESS: Well, all of the Maintenance Supervisors are
17 on 3(e).

18 HEARING OFFICER PALENCIA: And who is your full-time
19 person?

20 THE WITNESS: What do you mean by full-time?

21 HEARING OFFICER PALENCIA: Well, you said there were two
22 part-time supervisors?

23 THE WITNESS: Meaning part-time on second shift. First
24 shift is 6:00 to 2:30, second shift is 2:00 to 10:30, and third
25 shift is 10:00 to 6:30, in general. We -- none of the

1 supervisors work those hours, so they work -- start earlier and
2 leave earlier, or start later and leave later, so that again we
3 can spread out six supervisors across 24 hours, seven days a
4 week.

5 That is what I mean by part-time. They aren't on those
6 scheduled hours.

7 HEARING OFFICER PALENCIA: Let's go to 3(e). On -- so
8 there are three Maintenance Supervisors.

9 THE WITNESS: Six in total.

10 HEARING OFFICER PALENCIA: Six in total, okay.

11 THE WITNESS: One, John Shealey, really doesn't do the
12 production lines, at all. The other five do the Business
13 Units.

14 HEARING OFFICER PALENCIA: Okay, I got it.
15 Please proceed.

16 MR. BOBBER: I will offer Exhibit 3 into the record, if we
17 haven't done that.

18 MR. STERN: No objection.

19 HEARING OFFICER PALENCIA: It has not?

20 THE COURT REPORTER: It has not been offered.

21 HEARING OFFICER PALENCIA: Any objection?

22 MR. STERN: None.

23 HEARING OFFICER PALENCIA: Okay, it is received into
24 evidence.

25 **(Employer's Exhibit No. 3, received into evidence.)**

1 Q BY MR. BOBBER: Okay. Mr. Pritchard, I have another topic
2 to cover with you before concluding, and that is reference back
3 from the organizational chart that we looked at to the acronym
4 NCE. Okay, remind us again, what does the acronym NCE stand
5 for?

6 A NCE stands for Nestlé Continuous Excellence.

7 Q And at a high level, can you just give us a general
8 description of what that is?

9 A It is the international program that Nestlé Worldwide has
10 adopted to drive continuous improvement in our operational side
11 of the business.

12 Q And with respect to your Bakersfield facility, when did
13 you initiate any NCE efforts?

14 A The original effort started, I think, about three and a
15 half or four years ago, just before I got there, and we have
16 been --

17 MR. STERN: I move to strike his testimony. It lacks
18 personal knowledge. He said it was before he got there.

19 HEARING OFFICER PALENCIA: Do you want to lay some
20 foundation?

21 Q BY MR. BOBBER: When did you get to the plant?

22 A Three and a half years ago.

23 Q And was the NCE Initiative already implemented?

24 A Yes.

25 Q And has it, during the entirety of your tenure at the

1 plant, has it continued to be an initiative?

2 A Yes.

3 Q Has the Company undertaken any effort to communicate to
4 the hourly workforce at the Bakersfield plant what the NCE
5 Initiative is about?

6 A Yes.

7 Q And how did you go about doing that?

8 A At the end of last year, 2010, beginning of this year,
9 2011, we had what is called plant wide meetings at which time I
10 presented basically a State of the Business presentation to all
11 of the members of the facility.

12 Q And where did you have these meetings?

13 A We had them in various meeting rooms throughout the
14 facility, so that we could get to everybody in the building.
15 So, some were in the large lunchroom, which is our largest
16 room; some in our largest conference room.

17 Q Were people required to attend?

18 A Yes, it was part of what we call our back-to-work
19 educational process, so that we can get mandatory trainings
20 done, and really just give people a picture of how we did, and
21 what we are going to do.

22 Q And what did your -- physically, what did your
23 presentation consist of?

24 A The first part of the presentation was really a look back,
25 how did we do result-wise for all of the performance measures

1 that we measure factory performance on, and then the second
2 part of the meeting was, I presented the Nestlé Continuous
3 Excellence model, and how and what we were going to do in 2011
4 to expand the program in Bakersfield.

5 Q Did you use any visual aids in your presentation to the
6 employees, or just talk at them?

7 A No, there was a PowerPoint™ presentation with both words
8 and pictures within the presentation.

9 Q Okay. Mr. Pritchard, I am handing you a multi-page
10 document marked Employer's Exhibit No. 4.

11 **(Employer's Exhibit No. 4, marked for identification.)**

12 Q BY MR. BOBBER: Would you take a look through that and
13 tell us what it is, if you recognize it?

14 A This is a copy of the presentation that I presented to the
15 plant at the beginning of 2011 -- end of 2010 and beginning of
16 2011.

17 Q Does the NCE Initiative have any impact on how production
18 employees and line Mechanic maintenance employees work with
19 each other?

20 MR. STERN: Objection; calls for a conclusion. Also
21 assumes facts not in evidence.

22 HEARING OFFICER PALENCIA: Re-ask your question -- re-ask
23 your question, please.

24 Q BY MR. BOBBER: Does the NCE Initiative have any impact on
25 the way in which production employees and line Maintenance

1 Mechanics interact with each other?

2 HEARING OFFICER PALENCIA: To your knowledge.

3 MR. BOBBER: Well, he is the person responsible for
4 communicating and implementing the NCE Initiative at the
5 facility --

6 HEARING OFFICER PALENCIA: I will allow the question.

7 THE WITNESS: Yes. One of the foundations of the Nestlé
8 Continuous Excellence journey is really in building capability
9 within the organization, and part of that education -- I think
10 actually the easiest way to explain it is, if you go to the
11 third page from the end --

12 MR. STERN: I'm sorry, from the end?

13 THE WITNESS: From the end -- the page with the triangle.
14 Our TPM process is really about how we can flip these
15 triangles.

16 Q BY MR. BOBBER: Let me stop you there.

17 You referenced TPM; what is that?

18 A Total Productive Manufacturing.

19 Q Okay. So, it is building capability throughout the
20 organization, so if you look at this slide, whether it is an
21 operator or a technician, which is Mechanic, a coach or a
22 manager, and coach is our old description for a supervisor, it
23 is really about how do we create capability in the
24 organization, so if you look at the top triangles for operator
25 and technicians, where a large percentage of their time, an

operator spends operating and a technician Mechanic is spent
breakdown maintenance, we want to get it to where the operators
become knowledgeable in what we call autonomous maintenance, so
that they can start to do some of the tasks that Mechanics do
today, cleaning, inspecting, lubrication, and turn those into
operator duties, so that the Mechanics can then devote more of
their time, based on their skills, to doing higher level work.

HEARING OFFICER PALENCIA: Operators -- okay, operators;
is that referring to --

THE WITNESS: Ice Cream Maker.

HEARING OFFICER PALENCIA: -- Ice Cream Makers, okay. And
then, the technicians, that would be your maintenance?

THE WITNESS: Maintenance, correct.

Q BY MR. BOBBER: Have you, at the facility, undertaken any
specific efforts to implement the concept or the initiative as
you just described it?

A Yes, we have initiated what we call a pilot line on Line
16, so that is our first autonomous maintenance, or AM line
within the factory, and on that line, we are in the process of
training operators to do those cleaning, inspection, and
lubrication tasks, so that the Mechanic doesn't have to. We
are also building their knowledge and skills so that they can
do the preventative maintenance, simple preventive maintenance
tasks that right now Mechanics have to do, so then, again,
Mechanics can start working on higher level things, and let --

1 work with training the operators on how to do it, help them
2 until they get skilled enough to do it, and then the operators
3 can take over those tasks rather than the Mechanic.

4 HEARING OFFICER PALENCIA: And when you are saying "line,"
5 you are referring to the production line?

6 THE WITNESS: Correct.

7 Q BY MR. BOBBER: How are you going about the process of
8 getting the production employees' capabilities built up to
9 perform these preventive maintenance tasks and these cleaning,
10 inspection, and lubrication tasks?

11 A It is the process of, A) building standard operating
12 procedures, SOP's. We have got a stack about five feet tall of
13 paper with all of the operating procedures for 27 lines worth
14 of operation, and those get built with operators and Mechanics,
15 sitting in a room, talking about how is the way we do this
16 properly, and then teaching each person on that line how to do
17 the things they need to do, verify they have done them
18 properly, and then transition from -- what used to be done by a
19 Mechanic to now it is done by our Ice Cream Maker.

20 Q And who is teaching the Ice Cream Makers how to perform
21 these tasks?

22 A For the most part, it starts out as a Mechanic teaching an
23 Ice Cream Maker, and then as we get Ice Cream Makers skilled,
24 they start taking over, so we do a train-the-trainer thing.

25 Q In terms of your pilot Line 16, where in the process is

1 that, in your judgment?

2 MR. STERN: Objection; vague and ambiguous, and doesn't
3 seek probative facts. Where is it at in his judgment? He
4 could say, "I think it is in a wonderful place," and that
5 doesn't add anything to the record.

6 MR. BOBBER: And then I would say, "What do you mean by
7 that, and how far along is it," so -- I don't know if the
8 objection gets us much of anywhere.

9 HEARING OFFICER PALENCIA: Well --

10 MR. BOBBER: I can rephrase it, if you would like.

11 HEARING OFFICER PALENCIA: Why don't you rephrase it?

12 Q BY MR. BOBBER: Is there a point in time in which you
13 expect a pilot project on Line 16 to be complete?

14 A Yes, the way TPM is set up, is through a series of steps
15 and --

16 MR. STERN: Objection; not responsive to the question.

17 The question was, "Is there a time you expect it will be
18 complete," and the answer to that is yes or no.

19 MR. BOBBER: Of course, Madame Hearing Officer, I will ask
20 him to explain the "yes," and then we will be in the same
21 position that we would have been in thirty seconds ago, but for
22 the obtrusive objection.

23 MR. STERN: How do you object unobtrusively -- never mind.
24 Sorry, go ahead.

25 Q BY MR. BOBBER: And when would you expect the Line 16

1 pilot project to be at completion?

2 A In TPM terms, it gets to completion when we pass Step 3
3 audit that happens -- according to our master plan, it should
4 happen by the beginning of next year.

5 Q And what in your NCE plan happens next after the pilot
6 line completes the Step 3 audit?

7 A Once the pilot line passes Step 3, then we start our
8 implementation across the rest of the floor -- production floor
9 to the rest of the lines and crews.

10 Q What Business Unit is Line 16 in?

11 A East.

12 [Long pause.]

13 HEARING OFFICER PALENCIA: If you don't have any more
14 questions on the pilot program, can I ask a couple questions?

15 MR. BOBBER: Yes, please.

16 HEARING OFFICER PALENCIA: When did the pilot program
17 begin?

18 THE WITNESS: We --

19 HEARING OFFICER PALENCIA: For Line 16.

20 THE WITNESS: The first time the pilot program started was
21 two years ago. We have actually just re-launched it this week.

22 HEARING OFFICER PALENCIA: It started two years ago?

23 THE WITNESS: We have had so much turnover, we have got
24 new people there, so we have to start over with the new people.

25 HEARING OFFICER PALENCIA: And two years ago, how long was

1 that program in place for?

2 THE WITNESS: Through the middle of the third quarter of
3 last year --

4 HEARING OFFICER PALENCIA: How many months, approximately?

5 THE WITNESS: Eighteen.

6 HEARING OFFICER PALENCIA: Eighteen months?

7 And what line was that with?

8 THE WITNESS: Same one, Line 16.

9 HEARING OFFICER PALENCIA: Same line, okay.

10 Are some of the same employees still in Line 16?

11 THE WITNESS: I believe we have two people left from the
12 original team.

13 HEARING OFFICER PALENCIA: And all right -- I'm sorry, you
14 might have already answered the question, but there are three
15 steps, is that correct, to this pilot program?

16 THE WITNESS: There is more than three steps, but three
17 steps is the first point in time where you say, "You have a
18 sustained process."

19 HEARING OFFICER PALENCIA: Two years ago when you did the
20 program, up to what step did you get to?

21 THE WITNESS: Two.

22 HEARING OFFICER PALENCIA: Okay. How many steps in total
23 are there?

24 THE WITNESS: Seven, I believe.

25 HEARING OFFICER PALENCIA: Is there any description on

1 Employer's Exhibit No. 4 about the pilot program itself?

2 THE WITNESS: No, not specifically.

3 HEARING OFFICER PALENCIA: About how many, and if you
4 don't know the answer, please don't guess, but about how many
5 production employees do you have on Line 16?

6 THE WITNESS: I -- it would be a guess; I am not sure.
7 Three shifts worth of people.

8 HEARING OFFICER PALENCIA: Three shifts worth of people?
9 And what about with maintenance employees?

10 THE WITNESS: They are part of this AM pilot thing.

11 HEARING OFFICER PALENCIA: And do you -- you have
12 maintenance employees on the three shifts on Line 16?

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: You may proceed.

15 MR. BOBBER: No further questions other than to offer
16 Employer's Exhibit No. 4 into the record.

17 MR. STERN: No objection.

18 HEARING OFFICER PALENCIA: All right, hearing no
19 objection, Employer's Exhibit No. 4 is received into the
20 record.

21 **(Employer's Exhibit No. 4, received into evidence.)**

22 HEARING OFFICER PALENCIA: Can we go off the record?
23 (Off the record.)

24 HEARING OFFICER PALENCIA: Back on the record, please.
25 There is nothing further from you, Mr. Bobber?

1 MR. BOBBER: No, ma'am.

2 HEARING OFFICER PALENCIA: Okay, Mr. Stern?

3 MR. STERN: Thank you.

4 **CROSS EXAMINATION**

5 Q BY MR. STERN: I think I heard you testify that the pilot
6 program on Line 16 was restarted this week; is that correct?

7 A That's correct.

8 Q And when did you first find out that the Union had begun
9 an organizing drive at the Bakersfield plant. Was it more than
10 a week ago?

11 A Yes.

12 Q Now, as far as Employer's Exhibit No. -- I think it is 4,
13 that is the PowerPoint™ presentation you were walking us
14 through?

15 A Uh-huh.

16 Q Anywhere in this document does it talk about production
17 employees performing maintenance tasks?

18 A Yes.

19 Q Okay, anywhere on here does it expressly state that any
20 production employee will perform any maintenance task?

21 A No.

22 Q And two years ago, you got to Step 2; is that correct?

23 A Yes.

24 Q And when you were still at Step 1, had you planned to stop
25 when you arrived at Step 2?

1 A No.

2 Q Something else intervened and threw a monkey wrench into
3 the plant?

4 A No, we had people turnover.

5 Q Okay, I see. And is the turnover rate from two years ago
6 different than your current turnover rate, if you know?

7 A It is more -- on that line, it is more stable today than
8 it was two years ago.

9 Q Okay, so on average, how many people were you losing from
10 Line 16 in a six-month or one-year period two years ago, if you
11 know?

12 A I don't know.

13 Q Do you know that figure for today?

14 A No.

15 Q Did you bring with you today any paperwork or any document
16 which discusses the pilot project on Line 16?

17 A No.

18 Q Now, you offered examples of the type of tasks that
19 production employees may be called on to do in the pilot
20 project, and if I heard you write, they included cleaning,
21 inspecting, and lubricating different pieces of equipment; is
22 that correct?

23 A Yes.

24 Q And would you agree with me that cleaning and inspecting
25 and lubricating could be considered simple preventative

1 maintenance tasks?

2 A Yes.

3 Q And then you testified they would also do simple
4 preventative maintenance tasks. Of your own personal
5 knowledge, has any production employee on Pilot Line 16 done
6 any maintenance tasks other than cleaning, inspecting, and
7 lubricating, if you know?

8 A I don't know.

9 Q Now, on Employer's Exhibit No. 3(e), do you have that
10 still in front of you? That is 3(e), Technical Operations --

11 A Okay.

12 Q In the left side of the page, there is a guy named Chris
13 Tovar; he is a Maintenance Supervisor; is that correct?

14 A Correct.

15 Q James Eklund, he is a Maintenance Supervisor?

16 A Correct.

17 Q Gerald Cleveland, Maintenance Supervisor?

18 A Yes.

19 Q John Shealey, same thing?

20 A Yes.

21 Q Dave Davidson, same thing?

22 A Yes.

23 Q And Dave Herren; is that correct?

24 A Correct.

25 Q And for the record, that is H-e-r-r-e-n.

1 Now, do any of those -- are there any other Maintenance
2 Supervisors on this sheet of paper?

3 A No.

4 Q And every one of those Maintenance Supervisors that we
5 just named reports directly to Roy Beyeler?

6 A Beyeler [*pronounced Beeler*].

7 Q I apologize.

8 Okay, do they report to anybody other than Mr. Beyeler?

9 A No.

10 Q And all of those six people that we named as Maintenance
11 Supervisors, only maintenance employees report direct to them;
12 is that correct?

13 A Correct.

14 Q As far as you know, no maintenance employee directly
15 reports to anybody other than a Maintenance Supervisor;
16 correct? Is that correct?

17 A No, that actually is not correct right now.

18 Q Okay, and is that an odd-ball situation, or is that
19 normal?

20 A The Utilities actually report to a manager, and not to the
21 Maintenance Supervisor.

22 Q Okay, and how long has that been going on, if you know?

23 A At least since I have been there.

24 Q Okay. And let's see; you talked about position
25 descriptions that you worked up. I heard that correctly?

1 A Yes.

2 Q And did you bring any of those position descriptions with
3 you today?

4 A Me personally, no. Does the HR Manager have them, yes.

5 Q Okay, and -- so all of the maintenance employees, their
6 first line supervision is a Maintenance Supervisor; is that
7 correct?

8 A That's correct.

9 Q And if I am a maintenance employee and I am working on a
10 line and a Production Supervisor comes up to me and says, "Stop
11 working on the thing you are working on and come help me with
12 this," should I check with the Maintenance Supervisor before I
13 do anything?

14 A If there is one there, yes.

15 Q Because normally maintenance employees get their work
16 instructions, their assignments from a Maintenance Supervisor,
17 one way or any other; is that correct?

18 A Most of the time.

19 Q Okay. So, what happens is a Production Supervisor may
20 have a problem that he or she thinks needs to be addressed
21 soon, quickly, and if they see a maintenance person there, they
22 can ask for help, but that maintenance employee, once they get
23 assignments from a Maintenance Supervisor, always has to check
24 with that Maintenance Supervisor, so the Maintenance Supervisor
25 can prioritize his work; is that correct?

1 A If there is one there, yes.

2 Q Okay, well, there is a communications system available for
3 the Maintenance Department, isn't there? Aren't -- strike that
4 question.

5 Aren't Nextel® provided to some employees at the plant,
6 correct?

7 A Yes.

8 Q Okay, and some maintenance employees are provided with
9 those Nextel® phones, correct?

10 A Correct.

11 Q And that is specifically for the purpose so they
12 communicate with each other within the Maintenance Department,
13 correct?

14 A Correct.

15 Q Production employees, hourly production employees are not
16 provided with those Nextel® phones, correct?

17 A Correct.

18 Q Now, do you know that maintenance employees are typically
19 assigned to a ten-hour shift?

20 A Yes.

21 Q Do you know of any exceptions to those?

22 A There are some maintenance employees -- yes.

23 Q Okay, can you name any particular maintenance employee
24 that is not working a ten-hour shift?

25 A Group Leader.

1 Q One Group Leader or more than one --

2 A Well, I believe all of the Group Leaders.

3 Q Okay, and aside from the Group Leaders, all maintenance
4 employees basically work a ten-hour shift; is that correct?

5 A To the best of my knowledge.

6 Q And when they work a ten-hour shift, they are provided
7 with a paid meal period; is that correct?

8 A That's correct.

9 Q And production employees typically work eight-hour shifts;
10 is that correct?

11 A Correct.

12 Q And they are not provided with a paid meal period;
13 correct?

14 A Correct.

15 Q So, before when you testified that the benefits -- I'm
16 sorry, strike that question.

17 Now, if a maintenance employee has a problem and they need
18 to leave early; a kid is sick, some kind of emergency, they
19 would go to their Maintenance Supervisor; correct?

20 A Correct.

21 Q And if I am a maintenance employee and my kid is sick and
22 I have got to go take care of my kid mid-shift, it would not be
23 appropriate for me to grab any Production Supervisor and seek
24 permission from a Production Supervisor; correct?

25 A That's correct.

1 Q There is a computerized work order and preventative
2 maintenance system in your plant; is that correct?

3 A Yes.

4 Q And the only ones who work that system or decide to make a
5 request for work, are maintenance employees; correct?

6 A Can you clarify a little bit more, please?

7 Q Maintenance employees have full access to the computerized
8 work order and preventative maintenance system, correct?

9 A Yes.

10 Q Okay, and they can go into that system and they can change
11 things, they can report their work has been done, hasn't been
12 done, there is a problem; that kind of thing, correct?

13 A Yes.

14 Q Production employees don't do that though, correct?

15 A Not yet.

16 Q Well, they don't do it -- as we sit here --

17 A Today, correct.

18 Q Okay.

19 [Long pause.]

20 Q Now, maintenance employees are required to provide their
21 own tools; is that correct?

22 A Yes.

23 Q And they are provided space within your plant to store
24 their tools, correct?

25 A That's correct.

1 Q And they will have those big roll-out shop toolboxes that
2 maintenance guys have, correct?

3 A Correct.

4 Q And they leave those at the plant, right? They don't take
5 them home?

6 A Correct.

7 Q And if one of them breaks, the maintenance employee is
8 responsible for his own tools; he has to replace it out of his
9 own pocket, right?

10 A I am not sure.

11 Q Okay. Do you know that maintenance employees are provided
12 with an annual tool allowance by the Employer?

13 A Yes.

14 Q And no such tool allowance is provided to any production
15 employee, as far as you know, correct?

16 A I don't know that.

17 Q Well, you have been there several years. You have never
18 run across anything that says production employees get tool
19 allowances, correct?

20 A If that is a specific question you are asking, yes, that
21 is correct; they don't get a tool allowance.

22 Q Okay, and it would make sense to you as the Plant Manager
23 that they don't get a tool allowance because they are not
24 required to provide their own tools like the maintenance guys,
25 right?

1 A Because we purchase the tools for the production people.

2 Q Right, and therefore, it wouldn't make sense to give them
3 a tool allowance like the maintenance people get, correct?

4 A Correct.

5 Q Now, to get a job as a maintenance employee at the plant,
6 there is a test for applicants, is that correct?

7 A Yes.

8 Q And in that test, there is a written test, correct?

9 A I believe so, but I don't know for sure.

10 Q You know there is a test, but you are not quite sure what
11 the details are?

12 A Correct.

13 Q But you do know that it tries to assess an applicant's
14 Mechanical knowledge, correct?

15 A To my personal knowledge, I do not know.

16 Q Okay, do you know whether it attempts to assess their
17 electronic knowledge?

18 A I don't know.

19 Q Do you know what the minimum qualifications are for a
20 maintenance -- an entry-level maintenance position in your
21 plant?

22 A No, I would have to look at the job description.

23 Q And do you know that in general, the Maintenance Mechanics
24 are paid more than the hourly production employees?

25 A Yes.

1 Q And do you know what this wage rate, the hourly wage rate
2 range is for a maintenance employee?

3 A Specific dollar and cents, no.

4 Q Are you able to estimate it for me?

5 A \$20 -- yes.

6 Q Okay, so the bottom of the range would be somewhere around
7 \$20?

8 A \$20 or \$21; somewhere around there.

9 Q What about the top of the range again for hourly
10 maintenance employees?

11 A Somewhere \$28, \$29, \$30; somewhere in there.

12 Q And what about for the production employees; what is your
13 estimate of the hourly pay rate for them?

14 A \$15 to \$20.

15 Q So, in general, the maintenance people make more than the
16 production people.

17 A Yes.

18 Q And in some cases, it is substantially more; as much as
19 thirty percent more?

20 A Yes.

21 Q I am glad you said yes, because I am really bad at math.

22 Okay. Now, the uniforms readily -- when you see one of
23 your employees in a uniform, you can identify whether they are
24 production or maintenance right away, correct?

25 A Yes.

1 Q Because first of all, the uniforms are made out of
2 different materials for production versus maintenance, right?

3 A Correct.

4 Q Production has polyester and maintenance, I think, has
5 cotton; is that right?

6 A Whatever the fire-resistant part of it is, yes.

7 Q But you do know that they are different material?

8 A Correct.

9 Q And the shirts are different colors?

10 A Correct.

11 Q One of them is a dark shirt and one is a much lighter
12 shirt; is that correct?

13 A Correct.

14 Q Who has the lighter shirt?

15 A Production.

16 [Long pause.]

17 HEARING OFFICER PALENCIA: With respect to the uniforms,
18 are the shoes the same?

19 Q BY MR. STERN: Everybody has to wear safety shoes in the
20 plant; is that correct?

21 A Correct.

22 Q And do you provide -- does the Employer provide safety
23 shoes?

24 A You get an allowance.

25 Q So the employee has to go buy their own so they get right

1 size and like that?

2 A Yes.

3 Q Well, let's see.

4 [Long pause.]

5 Q Maintenance Department employees go to Maintenance
6 Department meetings; is that correct, if you know?

7 A Yes.

8 Q And for the most part, only maintenance -- strike that.

9 For the most part, of the hourly employees, only
10 Maintenance employees attend the Maintenance Department
11 meetings, correct?

12 A Not all of the time.

13 Q Most of the time?

14 A Most of the time, yeah.

15 Q At your company, are there hourly employees that are
16 classified as permanent?

17 A I don't know what you meant by permanent.

18 Q Well, are there hourly employees at your company that are
19 classified as temporary employees?

20 A Yes.

21 Q And you currently have temporary production employees,
22 correct?

23 A Correct.

24 Q And can you give me an estimate of production employees
25 that are classified as temporary; just your best estimate.

1 A 25 to 40.

2 Q Okay, 25 to 40 percent of production employees are
3 temporary employees?

4 A Depending on the time of the year.

5 Q And maintenance, aren't the overwhelming majority, if not
6 all of them, are permanent employees?

7 A Most of them.

8 Q Do you personally know of any maintenance employee
9 currently employed at the Bakersfield employee, who has not
10 been classified as permanent?

11 A Could I give you a name? No. Is there? Yes.

12 Q Okay. Now, Exhibit 1 is no longer there --

13 HEARING OFFICER PALENCIA: I can take it there --

14 MR. STERN: Well, I am not sure we need the exhibit.

15 Q BY MR. STERN: Part of the physical plant is devoted to
16 Research and Development area; is that correct?

17 A Correct.

18 Q And you don't call it R&D; what do you call it? Is it
19 RDC?

20 A No, R&D is --

21 Q I'm sorry, TAG; is that where your R&D Center is?

22 A The two -- two different functions. Technical
23 Applications Group and Research and Development are both done
24 in the accompanying building.

25 Q Okay, and in that building, production employees do not

1 work, correct?

2 A That's correct.

3 Q But maintenance employees do when they have to fix
4 something there, correct?

5 A Correct.

6 Q In fact, maintenance employees go throughout every part of
7 your physical plant to perform their duties, correct?

8 A Some, yes.

9 Q Like for example, the Utilities guys, correct?

10 A That's correct.

11 Q Do the Utilities guys take care of electric issues?

12 A Some.

13 Q Like power source issues?

14 A Some, yeah.

15 Q And do they take care of the heating, ventilation, and air
16 conditioning?

17 A Yes.

18 Q And those are examples of duties that require them to go
19 throughout the plant to perform their duties?

20 A Correct.

21 Q But production employees, for the most part, especially
22 the hourly production employees, are assigned to a specific
23 portion of the plant, and that is where they stay and work all
24 day; is that correct?

25 A Yes.

1 [Long pause.]

2 Q Do you know of any instance where the maintenance employee
3 became a production employee, hourly?

4 A No.

5 Q It wouldn't make sense to you that that would happen,
6 right?

7 A No.

8 Q And there is never a situation where, in your knowledge,
9 you are short a production guy for whatever reason, you don't
10 ever grab a maintenance guy and try to turn him into a
11 production guy for a shift, correct?

12 A I don't know.

13 Q Well, you have never seen that happen, correct?

14 A No.

15 Q You have never had that reported to you at the daily
16 meetings, correct?

17 A Correct.

18 Q And generally, the maintenance employees that you have are
19 fairly highly skilled; is that correct?

20 MR. BOBBER: Objection, vague.

21 Q BY MR. STERN: Well, let me back up. Do you advertise for
22 positions in your company when you have vacancies?

23 A Sometimes.

24 Q And in those advertisements, do you use the word skilled?

25 A I don't know.

1 Q Okay. But based on your knowledge, the maintenance
2 employees in general have a higher skill set than the
3 production employees, and that is why you pay them more,
4 correct?

5 MR. BOBBER: Objection, vague. Without a description of
6 what type of skills he is talking about it is unanswerable.

7 HEARING OFFICER PALENCIA: We will follow up.

8 Q BY MR. STERN: Isn't that true that general production
9 employees are paid more because they are considered to have
10 higher skills by the Company?

11 MR. BOBBER: Vague as to higher.

12 THE WITNESS: Production boys aren't paid more; that is
13 what you just asked.

14 MR. STERN: Oh, then I screwed that up and I apologize and
15 I will withdraw the question.

16 Q BY MR. STERN: Isn't it true that your employer generally
17 pays higher skilled work at a higher level?

18 A Yes.

19 HEARING OFFICER PALENCIA: And by "higher skilled," what
20 do you understand that to be?

21 MR. STERN: Well, how about let me ask a question?

22 Q BY MR. STERN: Do you understand higher skilled to mean
23 that they have more technical knowledge, for example, in areas
24 of Mechanics and electronics, correct?

25 A Yes.

1 [Long pause.]

2 Q Now, in the machine shop, you have lots of tool-making
3 equipment in there; is that correct, or some tool-making
4 equipment?

5 A Yes.

6 Q And are production employees allowed to use that
7 equipment?

8 A No.

9 Q They are not -- they don't have the skills to use it,
10 correct?

11 A That's correct.

12 Q The production employees have scheduled meal and break
13 times; is that correct?

14 A I don't know what you mean by scheduled.

15 Q Well, let's say I am a production -- I am an hourly
16 production employee in your plant. Is there -- and I work day
17 shift. What time am I normally supposed to take my meal break?

18 A Sometime in the first five hours.

19 Q And it is up to me when I take it?

20 A In coordination with the rest of the team.

21 Q So what if everybody on my team wants to take a meal break
22 at the same time; is that allowed?

23 A No.

24 Q So, it is not up to the employees when they take their
25 meal breaks; it is up to the supervisors, correct?

1 A No, the team schedules breaks.

2 Q Okay, so the whole team gets together every day and
3 schedules breaks?

4 A Well, not every day, but --

5 Q So, typically, how many people on a team; just ballpark.

6 A As few as ten and as many as twenty.

7 Q Okay, so let's say we have got ten on a team; is one of
8 those -- and half of the people want to have a break schedule
9 one way and the other half want to do it a completely different
10 way. Who decides when the breaks are going to be? The
11 supervisor?

12 A The team with help from the supervisor.

13 Q But at the end of the day, it is the supervisor's call,
14 right, because the supervisor is responsible to make sure that
15 the plant is staffed adequately?

16 A Yes.

17 And do you know how maintenance employees decide when to
18 break for their meals?

19 A No.

20 Q Now, for employees -- production employees in addition to
21 meal breaks, they also get break time, like ten or fifteen
22 minutes twice a day; is that right?

23 A Yes.

24 Q And are those break times set by the Employer?

25 A Again, to have them, yes.

1 Q Okay, and do you know who sets break times -- not meal
2 period breaks, but the other break times for the maintenance
3 employees?

4 A No.

5 Q Maintenance employees are subject to being on-call. If
6 they are off-shift and some emergency happens and the Employer
7 needs more maintenance guys to come in right now, the
8 maintenance people are subject to being called in, correct?

9 A Yes.

10 Q And that happens, correct?

11 A Occasionally.

12 Q But the production employees are not subject to those
13 call-ins, correct?

14 A Not to my knowledge.

15 [Long pause.]

16 MR. STERN: One second, please.

17 HEARING OFFICER PALENCIA: Do you need -- do you need a
18 minute?

19 MR. STERN: Thirty seconds. I think I am done, but I just
20 want to make sure.

21 [Long pause.]

22 Q BY MR. STERN: Now, I think I asked you before, but it has
23 never happened to your knowledge that a maintenance person is
24 made a production worker temporarily. Now, I want to ask you,
25 has it ever happened that a production is like, for one shift,

1 made a maintenance worker?

2 A Not to my knowledge.

3 Q And you wouldn't expect that to happen because they, for
4 the most part, don't possess the skills that you need to be a
5 maintenance employee, right?

6 A I wouldn't say that, no.

7 Q And what kind of equipment do maintenance employees use to
8 perform their job on a regular basis?

9 A Specifics, I don't know.

10 Q Now, does your employer maintain a seniority list for any
11 of the hourly employees?

12 A Yes.

13 Q And to what purpose does your Employer put seniority to?
14 To select shifts?

15 A At times, yes.

16 Q And is seniority used for anything other than to select
17 shifts?

18 A Vacation.

19 Q When somebody gets a vacation?

20 A [No audible response.]

21 Q Anything else?

22 A Not that I can think of off the top of my head.

23 Q Okay, and you have one seniority list for the maintenance
24 and another one for the production?

25 A I believe that is the case, yes.

1 MR. STERN: Thank you; I have nothing further. Appreciate
2 your testimony.

3 HEARING OFFICER PALENCIA: Just some quick questions, just
4 some follow-up questions.

5 **EXAMINATION BY THE COURT**

6 HEARING OFFICER PALENCIA: You had discussed a meeting
7 that you had when you made a presentation in August of 2010 --
8 end of August of 2010, and I wasn't clear, but was that one
9 meeting or separate meetings where you did your presentation?

10 THE WITNESS: With 800 people, it takes more than one
11 meeting, so it was several meetings.

12 HEARING OFFICER PALENCIA: And at these meetings, were
13 there separate meetings for maintenance employees and separate
14 meetings for production employees?

15 THE WITNESS: No, they were all together.

16 HEARING OFFICER PALENCIA: Mr. Stern asked you during
17 cross examination whether there was anywhere on Employer's
18 Exhibit No. 4, any mention of production employees performing a
19 maintenance task. Do you recall that?

20 THE WITNESS: Uh-huh.

21 HEARING OFFICER PALENCIA: And do you remember your
22 response to that?

23 THE WITNESS: Yeah -- well, I think I started to say that
24 the triangle page, but there are no specific mentions to --

25 HEARING OFFICER PALENCIA: You are referring to the -- it

1 is the third page?

2 THE WITNESS: The third page from the end, yes. Correct.

3 HEARING OFFICER PALENCIA: Where we had the triangle --

4 I'm sorry, can -- what did you just say?

5 THE WITNESS: Well, I was trying to say is if you look at
6 the triangles, the things that are in the top row of triangles
7 in terms of the things that are performed by people, there is
8 transition from the things that were in the technician
9 triangles over to now what the operator is doing, so it is
10 really about the plant maintenance starts to go into some of
11 the autonomous maintenance, so there is a circular motion to
12 those tasks as you go through them.

13 HEARING OFFICER PALENCIA: You are saying -- okay, let's
14 look at the operators, the Ice Cream Makers.

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: Autonomous maintenance, and
17 that is what you refer to in your testimony as cleaning and
18 inspecting, correct?

19 THE WITNESS: And lubrication, correct.

20 HEARING OFFICER PALENCIA: Okay, and lubrication.

21 THE WITNESS: Yes.

22 HEARING OFFICER PALENCIA: Okay. During cross
23 examination, Mr. Stern also asked you with regards if a -- I
24 believe it was, if a maintenance employee was told by a
25 production supervisor to do something, that the maintenance

1 employee would have to first check with their supervisor, and I
2 believe your response was, that if there was one.

3 THE WITNESS: Correct.

4 HEARING OFFICER PALENCIA: And isn't a Maintenance
5 Supervisor required to be present at every shift?

6 THE WITNESS: No.

7 HEARING OFFICER PALENCIA: Explain.

8 THE WITNESS: Again, because we try to cover 24 hours,
9 seven days a week, there are going to be hours when there isn't
10 a Maintenance Supervisor on-site. So, in those hours, the
11 Production Supervisor is the Shift Manager, if you will,
12 because there is nobody else here.

13 HEARING OFFICER PALENCIA: So, if a particular problem
14 comes up with a maintenance employee, would that maintenance
15 employee then go directly to the --

16 THE WITNESS: The Production Supervisor.

17 HEARING OFFICER PALENCIA: -- Production Supervisor?

18 THE WITNESS: In all cases, probably not. In most cases,
19 yes, because they are the on-site person.

20 HEARING OFFICER PALENCIA: What do you mean, not in all
21 cases?

22 THE WITNESS: If it is something critical, to the
23 Counselor's words, we have Nextel™ phones, so they could call
24 their supervisor first, to try to talk to their direct
25 supervisor.

1 HEARING OFFICER PALENCIA: So, is a supervisor always
2 available via Nextel™ to a maintenance employee?

3 THE WITNESS: I am not sure, but I think so.

4 HEARING OFFICER PALENCIA: The computer work system and
5 preventative system, is this all in one computer where
6 everybody gets to access this computer, or several computers?

7 THE WITNESS: It is one software program accessible from
8 different computers.

9 HEARING OFFICER PALENCIA: And different computers are
10 located throughout where in the facility?

11 THE WITNESS: The Planning Offices have most of them, but
12 some of the supervisors have access, too.

13 HEARING OFFICER PALENCIA: When you say the Planning
14 Offices, what are the Planning Offices?

15 THE WITNESS: There are people who put information into
16 the computer system, that then generate the preventative
17 maintenance tasks. They key them in and getting the print-outs
18 and handing them to the techs.

19 HEARING OFFICER PALENCIA: So, if a maintenance employee
20 needs to use a computer, can they use any of those computers or
21 are there particular computers that are assigned to the
22 maintenance employees, so they can access the computer work
23 system?

24 THE WITNESS: Multiple computers.

25 HEARING OFFICER PALENCIA: And they do -- and is the

1 computer system accessed by maintenance employees on a daily
2 basis?

3 THE WITNESS: Every day? I am not sure. Almost every
4 day, yes.

5 HEARING OFFICER PALENCIA: Can you explain to me, why
6 would they access -- what would -- why would a maintenance
7 employee access this computer work system?

8 THE WITNESS: To either say, "I received these five
9 preventative maintenance tasks, and they are now all done," or
10 "I need to get -- I need to order parts for tomorrow's PM
11 tasks, so I have got to add three parts to tomorrow's PM."

12 HEARING OFFICER PALENCIA: If they need to order parts,
13 would they -- would they -- can they independently order these
14 parts, or do they have to check with their supervisor first?

15 THE WITNESS: Well, neither one of them would actually
16 physically do the ordering. That would go through -- that
17 would go into the computer maintenance system, and then the
18 purchasers would actually purchase --

19 HEARING OFFICER PALENCIA: But prior to inputting that
20 information into the computer work system, would they have to
21 notify a supervisor?

22 THE WITNESS: Not necessarily.

23 HEARING OFFICER PALENCIA: Okay, you were also asked about
24 meetings, and -- and I think your testimony was that most of
25 the time, only maintenance employees attend these meetings. Is

1 it not a mandatory requirement for maintenance employees; the
2 meetings are not a mandatory requirement?

3 THE WITNESS: Which meetings?

4 HEARING OFFICER PALENCIA: Let me ask, do you have any
5 mandatory meetings for your production people?

6 THE WITNESS: Well, there are the -- what do you want to
7 call it? There are the governmental-prescribed meetings that
8 you have to do, so those are mandatory; safety training and
9 things like that.

10 HEARING OFFICER PALENCIA: Your safety training meetings,
11 let's take that first. Your safety training meetings, do -- I
12 am assuming you have more than one meeting for that particular
13 subject that you are going to cover?

14 THE WITNESS: Yes.

15 HEARING OFFICER PALENCIA: And do you have separate
16 meetings for production employees versus maintenance employees?

17 THE WITNESS: It depends on the topic and the trainer, so
18 we do a train-the-trainer thing, so we get the subject matter
19 -- an expert trainer trains a bunch of those trainers, and then
20 those trainers then go out and roll-out the training.

21 HEARING OFFICER PALENCIA: Aside from mandatory government
22 meetings such as safety meetings that are required, what other
23 types of meetings do you have?

24 THE WITNESS: Everything from benefit roll-out this time
25 of year, to -- to two or three times do a plant-wide meeting

1 where I try to cover the state of the business.

2 HEARING OFFICER PALENCIA: Are there any weekly meetings
3 for your production people?

4 THE WITNESS: Well --

5 HEARING OFFICER PALENCIA: To your knowledge?

6 THE WITNESS: To my knowledge, we have -- each of the
7 Business Units does a -- one week is quality update, one week
8 is safety update, and one week is kind of a people update, and
9 one week is a business update, so those happen throughout the
10 course of the four weeks of each month.

11 HEARING OFFICER PALENCIA: Of each month, okay. And these
12 are -- and are these meetings attended by maintenance
13 employees, as well?

14 THE WITNESS: I believe so, but I don't know that for
15 sure. They are Business Unit meetings, so it should be
16 everybody within the Business Unit.

17 HEARING OFFICER PALENCIA: Should be, but you don't know.

18 THE WITNESS: I don't know.

19 HEARING OFFICER PALENCIA: Aside from these meetings are
20 there any types of meetings that are held, say on a monthly
21 basis, for maintenance employees -- for only maintenance
22 employees and not production employees, to your knowledge?

23 THE WITNESS: To my knowledge, no.

24 HEARING OFFICER PALENCIA: Are there any types of say
25 monthly meetings for production employees where maintenance

1 employees do not attend?

2 THE WITNESS: Again, to my knowledge, no.

3 HEARING OFFICER PALENCIA: There was some reference with
4 regard to temporary employees.

5 THE WITNESS: Uh-huh.

6 HEARING OFFICER PALENCIA: Okay, and I believe that the
7 testimony is that they are production employees that are
8 temporary, and what is -- how -- what percentage of your
9 workforce, to your knowledge, is temporary, of the production
10 employees?

11 THE WITNESS: I think I said somewhere between 25 and 40
12 percent.

13 HEARING OFFICER PALENCIA: Of the production employees?
14 Okay, and by temporary, can you tell me what you mean by
15 temporary?

16 THE WITNESS: They are third-party hired employees that
17 allow us to flex up and down depending on the needs of the
18 business.

19 HEARING OFFICER PALENCIA: So, are they hired directly by
20 the --

21 THE WITNESS: The third party.

22 HEARING OFFICER PALENCIA: They are hired directly by a
23 third party?

24 THE WITNESS: Yes.

25 HEARING OFFICER PALENCIA: And the third party does the

1 interviewing?

2 THE WITNESS: Uh-huh, yes.

3 HEARING OFFICER PALENCIA: Okay. And are these temporary
4 -- are these temporary employees included in the -- I want to
5 show you Board Exhibit No. 2.

6 If you look at No. 9, and it is 9(b). Are those temporary
7 included, to your knowledge, in the 578 production employees
8 that are mentioned on Page 3?

9 THE WITNESS: No.

10 HEARING OFFICER PALENCIA: They are not?

11 THE WITNESS: No.

12 HEARING OFFICER PALENCIA: Okay.

13 The 578 production employees mentioned on Page 3 of Board
14 Exhibit No. 2, were those people hired by this -- by a third-
15 party entity?

16 THE WITNESS: No, those are Nestlé-Dreyer's Ice Cream.

17 HEARING OFFICER PALENCIA: Okay. And is it -- strike
18 that.

19 Mr. Bobber?

20 MR. BOBBER: I have a few follow-up questions, please.

21 **REDIRECT EXAMINATION**

22 Q BY MR. BOBBER: Mr. Pritchard, does the Company provide
23 work tools to the production employees, the Ice Cream Makers?

24 A When needed, yes.

25 Q And why do you do that?

1 A There are specific pieces of equipment that need special
2 tools to make adjustments with.

3 Q What kind of adjustments do you expect the production
4 employees to make?

5 MR. STERN: Objection, foundation. It is also irrelevant
6 what he expects him to make. What is relevant is what they
7 actually do.

8 HEARING OFFICER PALENCIA: Okay, overruled.
9 Go ahead and answer the question.

10 THE WITNESS: They have things from wrenches to adjust
11 rails and move things closer or farther together. If cartons,
12 for instance, can't get down the conveyor properly, they can
13 then have the tools to loosen the bolt and slide a rail out or
14 something like that.

15 Q BY MR. BOBBER: So you are talking about adjustments on
16 the production equipment?

17 A That's correct.

18 Q And do production employees actually do this?

19 A Yes.

20 Q Mr. Stern asked you questions about the Utilities
21 maintenance employees working throughout the facility, and I
22 want to follow-up on that.

23 Of the 113 maintenance employees that we are talking about
24 in this case, approximately how many are in this Utilities job?

25 A I believe it is about fifteen.

1 Q And I understand from your earlier testimony that they
2 might be asked to go fix things in different parts of the
3 facility, but let me ask you about the other maintenance
4 employees, other than those fifteen or so, the other hundred or
5 so, what is their work area?

6 A A majority of the rest of the hundred are associated with
7 either the Business Units or the palletizing area within the
8 factory.

9 Q Do you have maintenance employees at the facility who
10 moved into the maintenance jobs after previously being
11 production employees at the plant?

12 A Yes.

13 Q Of the 113 maintenance employees that we are talking about
14 in this case, approximately how many of them were production
15 employees at the Bakersfield plant before moving into the
16 maintenance jobs?

17 A I believe it is somewhere between thirty and forty.

18 Q Percent?

19 A Yes.

20 MR. BOBBER: Okay, nothing further.

21 MR. STERN: Two quick questions.

22 **RECROSS EXAMINATION**

23 Q BY MR. STERN: Are maintenance employees at your plant
24 typically hired by a third party or directly by Nestlé?

25 A Both.

1 Q Under what circumstances is a third party used to hire
2 maintenance employees, if you know?

3 A I don't know.

4 Q When was the last time it happened, if you know?

5 A Earlier this year.

6 Q How many maintenance employees this year have been hired
7 by a third party, rather than directly by your employees?

8 A I don't know.

9 Q Do you know the individual's name that was hired earlier
10 this year by a third party?

11 A No.

12 Q Do you know the name of the third party?

13 A It is Volt, yes.

14 Q What is the name?

15 A Volt.

16 Q Volt?

17 HEARING OFFICER PALENCIA: How do you spell that?

18 THE WITNESS: V-o-l-t.

19 Q BY MR. STERN: Is Volt owned by Nestlé?

20 A No.

21 Q Do maintenance employees ever change from working on a
22 specific line to becoming a Utilities employee?

23 A I am not sure.

24 Q You offered us a figure of 30 to 40 percent of the current
25 113 maintenance employees, that were formerly production

1 employees. Have you reviewed any data recently from which you
2 can give us that figure?

3 A The list of the Mechanics.

4 Q And you reviewed that recently?

5 A Yes.

6 MR. STERN: Thank you. Nothing further.

7 MR. BOBBER: Nothing further.

8 HEARING OFFICER PALENCIA: Can we go off the record?

9 (Off the record.)

10 HEARING OFFICER PALENCIA: Okay, back on the record.

11 **FURTHER EXAMINATION BY THE COURT**

12 HEARING OFFICER PALENCIA: I have some questions for you.

13 Employer's Exhibit No. 2, I just wanted to make sure that
14 I understand the layout of the plant, okay?

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: How many buildings -- are all
17 of these buildings connected or do you have separate buildings
18 that Employer's Exhibit No. 2?

19 THE WITNESS: It is one continuous building from that end
20 to that end.

21 HEARING OFFICER PALENCIA: Okay. One continuous building
22 that has two separate entries, correct?

23 THE WITNESS: Correct.

24 HEARING OFFICER PALENCIA: Do production employees working
25 in one area of the plant have any reason to go to the other

1 area of the plant?

2 THE WITNESS: Not generally.

3 HEARING OFFICER PALENCIA: Generally they would stay in
4 their own area?

5 THE WITNESS: Yes.

6 HEARING OFFICER PALENCIA: The maintenance production
7 employees have an immediate supervisor that they report to?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: As well as the production
10 employees?

11 THE WITNESS: Yes.

12 HEARING OFFICER PALENCIA: And is it correct to say that
13 in your knowledge, there is no common immediate supervision
14 over the maintenance employees and the production employees?

15 THE WITNESS: No, me technically, but no.

16 HEARING OFFICER PALENCIA: But with the two supervisors
17 they would report to the same top person; is that correct? Who
18 supervises -- who supervises the supervisors of the maintenance
19 employees?

20 THE WITNESS: Maintenance Supervisors report to the
21 Maintenance Manager.

22 HEARING OFFICER PALENCIA: Okay.

23 THE WITNESS: Production Supervisors report to the
24 Manufacturing Manager -- the Business Unit Manager.

25 HEARING OFFICER PALENCIA: The Business Unit Manager,

1 okay, and is the Business Unit Manager is at the facility?

2 THE WITNESS: Yes.

3 HEARING OFFICER PALENCIA: On a daily basis?

4 THE WITNESS: Yes.

5 HEARING OFFICER PALENCIA: And the Production Managers are
6 at the plant on a daily basis, as well?

7 THE WITNESS: Yes.

8 HEARING OFFICER PALENCIA: And there are different
9 requirements, different job requirements for the production
10 employees and the maintenance employees, correct?

11 THE WITNESS: It depends on what you mean by different
12 requirements.

13 HEARING OFFICER PALENCIA: Or different skills are
14 required to obtain employment as a production employee versus a
15 maintenance employee; is that correct?

16 THE WITNESS: Yes.

17 HEARING OFFICER PALENCIA: Do -- to your knowledge are any
18 of the work duties of the maintenance employees shared by the
19 production employees?

20 THE WITNESS: I would say, yes.

21 HEARING OFFICER PALENCIA: Explain.

22 THE WITNESS: Because again, regardless of whether you are
23 maintenance or production, the job duty is to make the highest
24 quality ice cream right the first time, safely, for everybody.

25 HEARING OFFICER PALENCIA: Let's go to a line.

1 THE WITNESS: Okay.

2 HEARING OFFICER PALENCIA: Okay, you have got a -- let's
3 take one line and would you have at that line an Ice Cream
4 Maker I, II, and a Mixer all working one line? Would that be
5 correct to say?

6 THE WITNESS: The Mixer wouldn't necessarily be associated
7 with the one line. It would be more than one line, so on the
8 line, there would be some number of Ice Cream Maker I's and
9 some number of Ice Cream Maker II's, and some piece of a
10 Mechanic, and some piece of a Mixer, because they have got more
11 than one line.

12 HEARING OFFICER PALENCIA: So, does a Mixer go from line
13 to line throughout their shift?

14 THE WITNESS: Throughout the eight hours that the Mix
15 Maker is there, they would be making mix for various lines.

16 HEARING OFFICER PALENCIA: And where would they be making
17 that mix?

18 THE WITNESS: Just off the Business Unit areas.

19 HEARING OFFICER PALENCIA: But is there a particular area
20 that is designated for them only?

21 THE WITNESS: There is an area where the tanks are, which
22 will hold the mix that they make, before it goes to the
23 production line.

24 HEARING OFFICER PALENCIA: So, the Mixer is at the tanks
25 mixing the liquid, and other than doing that, what else do they

1 do throughout their work shift? Do they take that mixer-mixed
2 product somewhere?

3 THE WITNESS: Well, it is all done through a series of
4 pipes, so we are just going to pump it from Point A to Point B,
5 but they are also going to take the ingredients and dump them
6 in with milk and water and --

7 HEARING OFFICER PALENCIA: Are the ingredients brought to
8 them?

9 THE WITNESS: Some are brought to them and some are pumped
10 to them.

11 HEARING OFFICER PALENCIA: Who brings them ingredients?

12 THE WITNESS: They would be other parts of a pre-
13 manufacturing from the Dry Warehouse.

14 HEARING OFFICER PALENCIA: Okay, these are not maintenance
15 employees, and these are not production employees; is that
16 correct?

17 THE WITNESS: They are in the production employee number.

18 HEARING OFFICER PALENCIA: They are in the production
19 employee number, but they are not the production --

20 THE WITNESS: On the line.

21 HEARING OFFICER PALENCIA: -- on the line.

22 THE WITNESS: Correct.

23 HEARING OFFICER PALENCIA: They are not part of the
24 production employees at issue and being petitioned for;
25 correct?

1 THE WITNESS: They are in that production number.

2 HEARING OFFICER PALENCIA: They are in the production --
3 okay.

4 THE WITNESS: It is the 587 or whatever the number was.

5 HEARING OFFICER PALENCIA: Okay.

6 So, they bring them the ingredients. These production
7 employees bring the ingredients?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: And that happens how many times
10 throughout the shift?

11 THE WITNESS: A lot. Every hour or so there is somebody
12 bringing some ingredient from Point A to Point B, with Point B
13 being the production line.

14 HEARING OFFICER PALENCIA: And explain to me the "bringing
15 the ingredients." Is that physically taking the ingredient --
16 do they have to give it to someone or --

17 THE WITNESS: It can be anywhere from bringing a pallet of
18 bags and then dumping a bag into a tank. It can be bringing a
19 pallet of chocolate chips or peanuts, bringing that to the line
20 so that we can then put the peanuts on top of a cone. It can
21 be bringing a pallet of wraps so that we can wrap the cone.

22 HEARING OFFICER PALENCIA: And have you observed this
23 happen?

24 THE WITNESS: Yes.

25 HEARING OFFICER PALENCIA: And when you observed this

1 happen, do these employees have any contact -- aside from
2 bringing over the mix ingredients, have you ever seen any
3 conversation taking place with the maintenance employees?

4 THE WITNESS: Yes.

5 HEARING OFFICER PALENCIA: What type of conversations have
6 you heard?

7 THE WITNESS: It -- for the most part with the Mix Maker
8 group, it is because like I said, everything that is liquid is
9 pumped from Point A to Point B. When the computer that manages
10 telling it to go from Point A to Point B doesn't work, there is
11 a technician who helps either re-program or re-program or
12 verify that a pump or valve doesn't work so that they can again
13 -- the Mechanic maintenance person would diagnose what the
14 issue is.

15 HEARING OFFICER PALENCIA: And would they correct the
16 issue?

17 THE WITNESS: Yes.

18 HEARING OFFICER PALENCIA: Are you involved in the
19 interviewing process at all, of maintenance employees?

20 THE WITNESS: No.

21 HEARING OFFICER PALENCIA: What about production
22 employees?

23 THE WITNESS: No.

24 HEARING OFFICER PALENCIA: Do you have knowledge who
25 interviews these employees?

1 THE WITNESS: Some knowledge, yes.

2 HEARING OFFICER PALENCIA: What knowledge do you have?

3 THE WITNESS: It will be some cross-functional team of
4 supervisors, HR, and maintenance production people.

5 HEARING OFFICER PALENCIA: I want to go into -- and this
6 may be repetitive, but the type of equipment used by each of
7 the employees at issue, and so let's go with the production
8 employees, okay?

9 THE WITNESS: Okay.

10 HEARING OFFICER PALENCIA: You have got your Ice Cream
11 Maker I and your Ice Cream Maker II.

12 THE WITNESS: Yes.

13 HEARING OFFICER PALENCIA: Okay, Ice Cream Maker I and II,
14 tell me -- describe to me what they do and what kind of
15 equipment they use?

16 THE WITNESS: So, an Ice Cream Maker I typically would do
17 packing, so it would be taking six cones and sticking them into
18 a tray to go into a box. It would be setting up wrap on a
19 spindle so that it can get rolled out so that you can put a
20 wrap around the cones as they come up off of the machine,
21 moving supplies around.

22 An Ice Cream Maker II typically is more of a line
23 operator, so they need to know how the freezer works, how the
24 filler works, and how the equipment on the cartoner and wrapper
25 work, so they are more familiar with the individual pieces of

1 equipment that make up the line.

2 HEARING OFFICER PALENCIA: But they are also doing the job
3 of the Ice Cream Maker I, correct?

4 THE WITNESS: At times they can, yes.

5 HEARING OFFICER PALENCIA: Okay.

6 THE WITNESS: Ice Cream Maker II's can do Ice Cream Maker
7 I's work, but Ice Cream Maker I's can't necessarily do Ice
8 Cream Maker II's work.

9 HEARING OFFICER PALENCIA: So, what do they spend their
10 time doing, the Ice Cream Maker II?

11 THE WITNESS: Running and managing the pieces of
12 equipment, freezer --

13 HEARING OFFICER PALENCIA: When you say "running," what do
14 you mean by that?

15 THE WITNESS: Both -- the specifications for that product
16 in line with what it is supposed to be, so that the temperature
17 of the ice cream has the right temperature, there is the right
18 amount of air incorporated into the product, it looks okay when
19 it comes out of the filler.

20 HEARING OFFICER PALENCIA: So, are they constantly having
21 to be checking that the product is coming out correctly?

22 THE WITNESS: Yes.

23 HEARING OFFICER PALENCIA: And then, you have got your Mix
24 Maker. Explain to me, what kind of equipment is a Mix Maker
25 working with, if any?

1 THE WITNESS: It starts with a computer and a recipe so
2 that he knows how much of each thing that goes into that batch
3 gets put into a batch, then it is basically either pump liquids
4 from a storage tank into a mix tank, or dump bags of this or
5 bags of that, or a drum of this, and once it is in the tank,
6 you again push buttons and agitate it and mix it up and then
7 pump it into another storage tank.

8 [Long pause.]

9 HEARING OFFICER PALENCIA: Now, your Utility group
10 employees which are part of the Maintenance employees, they --
11 is it correct to say that they don't work along with the
12 production employees?

13 THE WITNESS: Correct. They really support the ammonia
14 and building facilities equipment but if a freezer, for
15 instance, has an ammonia problem, it is a utility maintenance
16 person that will come out to troubleshoot the freezer, because
17 the ammonia is part of the freezer.

18 HEARING OFFICER PALENCIA: And at that point, the utility
19 person would have contact with your production employees; is
20 that correct?

21 THE WITNESS: That's correct.

22 HEARING OFFICER PALENCIA: But who would the utility --
23 when the utility person goes, say, to fix a freezer, do they
24 have -- who are they dealing with, if any person?

25 THE WITNESS: Both the Production and the Maintenance

1 Supervisors.

2 HEARING OFFICER PALENCIA: When a utility person is not
3 being called to work on a freezer or on some sort of electrical
4 problem, where would you find them within the facility?

5 THE WITNESS: In what we call the utility rooms, so there
6 is again -- there is a computer system that manages and
7 monitors all of the ammonias -- the two rooms that we have
8 ammonia compressors --

9 HEARING OFFICER PALENCIA: Well, you said utility rooms,
10 so is this more than one room?

11 THE WITNESS: There is -- the new part of the building and
12 the old part of the building each has a separate control.

13 HEARING OFFICER PALENCIA: And -- okay, these utility
14 rooms, where are they located?

15 THE WITNESS: One is back -- up here [indicating] --

16 HEARING OFFICER PALENCIA: Let's describe for the record
17 what you are pointing to. You said it is -- take your time.

18 It is located -- is it to the left-hand side of the East
19 Business Unit; is that what you are saying?

20 THE WITNESS: [Inaudible - away from microphone.]

21 HEARING OFFICER PALENCIA: Is there any reason for any
22 production employee to be in those two areas?

23 THE WITNESS: No.

24 HEARING OFFICER PALENCIA: To your knowledge, how often
25 would a utility person need to go to an area where a production

1 employee is working to fix something, on a given day or a given
2 week?

3 THE WITNESS: On a given week, it is probably one or two
4 times a day that somebody would have to at least go and
5 investigate something that happened on the production floor,
6 related to ammonia or electronics.
7 [Long pause.]

8 HEARING OFFICER PALENCIA: I want to talk about your line
9 Mechanics, okay?

10 So, do you have a line Mechanic assigned to a particular
11 line on every shift?

12 THE WITNESS: No, not every line. Line Mechanics are
13 assigned to a Business Unit, so a group of lines, so there is a
14 given number of Mechanics per Business Unit per shift.

15 HEARING OFFICER PALENCIA: Do you have any knowledge of
16 approximately how many line Mechanics are assigned to a
17 business group or a Business Unit?

18 THE WITNESS: I would guess at this point, no.

19 HEARING OFFICER PALENCIA: Are these people basically on
20 call, to be called to that particular Business Unit, if they
21 are necessary?

22 THE WITNESS: They work in that Business Unit and then
23 flow to where there is a problem or an issue.

24 HEARING OFFICER PALENCIA: Okay, so they work in that
25 Business Unit. Is there a particular area in that Business

1 Unit assigned to them, where they work out of?

2 THE WITNESS: No, they work in the space of those
3 highlighted areas.

4 HEARING OFFICER PALENCIA: And why would they be called to
5 a line?

6 THE WITNESS: If there was a problem that the operator
7 either couldn't fix or doesn't know how to.

8 HEARING OFFICER PALENCIA: If they are not fixing a
9 problem, are they at a desk most of the time?

10 THE WITNESS: Probably not. That would be when they get
11 into the PM list of tasks, so if there isn't a specific problem
12 that they need to fix at that moment, there are always daily,
13 weekly, monthly tasks --

14 HEARING OFFICER PALENCIA: Such as?

15 THE WITNESS: Check the filters on this line, or make sure
16 there isn't -- look at all of the nuts and bolts on the line
17 and make sure there is not one missing. Lubricating some of
18 the places that the operators aren't trained or capable of --

19 HEARING OFFICER PALENCIA: So, do they have a checklist
20 that they have to go through?

21 THE WITNESS: Well, yeah. From the computer system they
22 will get a list of PM's for their lines and their Business Unit
23 on their shift.

24 HEARING OFFICER PALENCIA: And as they are doing this, are
25 they working with anyone else, or are they working

1 independently on their own?

2 THE WITNESS: It could be a pair of people. It depends on
3 the task, but typically, I think most of them are --

4 HEARING OFFICER PALENCIA: And when you say it could be a
5 pair of people, you mean another line Mechanic?

6 THE WITNESS: Yes.

7 HEARING OFFICER PALENCIA: When they make -- when they are
8 going through their checklist and they are checking -- making
9 sure that things are operating how they should be according to
10 that checklist, they can be checking equipment that is not in
11 their Business Unit; is that correct?

12 THE WITNESS: Could they be doing it? Yes. More than
13 likely, they are checking equipment within their Business Unit.

14 HEARING OFFICER PALENCIA: As they are checking equipment
15 in their Business Unit, where is that equipment located with
16 regards to -- to maintenance employees working?

17 THE WITNESS: If it is an East Business Unit Mechanic, it
18 will be within that block that is the East Business Unit; some
19 piece of equipment within that circle or rectangle or shape,
20 whatever you want to call it.

21 HEARING OFFICER PALENCIA: Do any of your employees wear
22 badges, company badges?

23 THE WITNESS: To get into the building, you have a card to
24 swipe.

25 HEARING OFFICER PALENCIA: Everyone has a card to swipe?

1 THE WITNESS: Yes.

2 HEARING OFFICER PALENCIA: What about identification
3 badges on their uniforms?

4 THE WITNESS: No -- well, they have their name.

5 HEARING OFFICER PALENCIA: Name tag?

6 THE WITNESS: Company name.

7 HEARING OFFICER PALENCIA: A company name?

8 THE WITNESS: It says "Dreyer's Ice Cream" and Leroy.

9 HEARING OFFICER PALENCIA: And everybody has the same one?

10 THE WITNESS: Yes.

11 HEARING OFFICER PALENCIA: Is there a particular
12 department only for production employees? Do they belong to a
13 particular department?

14 THE WITNESS: One of those Business Units in Manufacturing
15 or Pre-Manufacturing.

16 HEARING OFFICER PALENCIA: And is -- but is there a
17 Production Department only for production employees?

18 THE WITNESS: Manufacturing is --

19 HEARING OFFICER PALENCIA: Part of --

20 THE WITNESS: Production is Manufacturing; Pre-
21 Manufacturing is kind of before you make ice cream.

22 HEARING OFFICER PALENCIA: Let's talk about Maintenance
23 employees real quick.

24 THE WITNESS: Okay.

25 HEARING OFFICER PALENCIA: When you say Maintenance

1 employees, does this refer in any way to janitorial work?

2 THE WITNESS: No.

3 HEARING OFFICER PALENCIA: Do you have any employees in
4 Maintenance that do, say, cleaning?

5 THE WITNESS: Not in Maintenance, no.

6 HEARING OFFICER PALENCIA: To your knowledge, has a union
7 ever represented employees at the facility in question?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: And to your knowledge, do you
10 know -- do you know whether maintenance employees were part of
11 this unit?

12 THE WITNESS: Yes.

13 HEARING OFFICER PALENCIA: Do you know if production
14 employees were part of that unit?

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: Was it a single unit or more
17 than one unit?

18 THE WITNESS: Single, I think.

19 HEARING OFFICER PALENCIA: You think, okay.

20 But you don't know for sure?

21 THE WITNESS: It was before I got there.

22 MR. STERN: I would like to move to strike all of his
23 testimony on prior organization; no foundation and no personal
24 knowledge.

25 HEARING OFFICER PALENCIA: And this is from second-hand

1 knowledge -- this is all second-hand knowledge for you?

2 THE WITNESS: Looking at papers that you are going to see.

3 MR. STERN: I don't think --

4 HEARING OFFICER PALENCIA: It is hearsay evidence. You
5 don't have any personal knowledge; we will leave it in the
6 record, and see whether anyone is going to be introducing any
7 evidence as to this, but the record can reflect that I was
8 asking the witness these questions, which are relevant, and if
9 he doesn't have any knowledge, then the record will reflect
10 that.

11 And this was before your time, correct?

12 THE WITNESS: Correct.

13 HEARING OFFICER PALENCIA: Before you were hired by the
14 company?

15 THE WITNESS: Correct.

16 HEARING OFFICER PALENCIA: I want to go over -- is there
17 more than one lunch room?

18 THE WITNESS: There is one lunch room for the factory
19 side, and one for the Distribution Center.

20 HEARING OFFICER PALENCIA: And is both lunch rooms
21 available to both production employees and maintenance
22 employees?

23 THE WITNESS: Depends what you mean -- they are available
24 for anybody. It is too far a distance to actually go to that
25 one if you work on this side of the factor. So, if you work in

1 the factory, you go to that one. If you work in the
2 Distribution Center, you go to this one.

3 HEARING OFFICER PALENCIA: At any -- do you go to the
4 lunch room?

5 THE WITNESS: I go to the one on the factory side.

6 HEARING OFFICER PALENCIA: And when you go to that lunch
7 room, do you ever see production employees and maintenance
8 employees at the same time in that lunch room?

9 THE WITNESS: Yes.

10 HEARING OFFICER PALENCIA: And do you ever see them
11 sitting together?

12 THE WITNESS: Occasionally.

13 HEARING OFFICER PALENCIA: Okay, occasionally? Define
14 occasionally.

15 THE WITNESS: Once or twice a week.

16 HEARING OFFICER PALENCIA: Do you go to the lunch room
17 every day?

18 THE WITNESS: I try not to, because there are too many
19 vending machines.

20 HEARING OFFICER PALENCIA: How often do you go in a week?

21 THE WITNESS: Three or four times.

22 HEARING OFFICER PALENCIA: Okay, one second.

23 [Long pause.]

24 HEARING OFFICER PALENCIA: Mr. Stern, any questions?

25 MR. STERN: Yeah, just real briefly -- no, never mind. I

1 don't have any.

2 HEARING OFFICER PALENCIA: Mr. Bobber?

3 MR. BOBBER: No, ma'am.

4 HEARING OFFICER PALENCIA: The witness is excused.

5 (Witness excused.)

6 MR. BOBBER: Ready for another witness?

7 HEARING OFFICER PALENCIA: Please call your next witness.

8 MR. BOBBER: The Company calls Norma McFaddin.

9 HEARING OFFICER PALENCIA: Raise your right hand, please.

10 Whereupon,

11 **NORMA McFADDIN,**

12 having been sworn, was called as a witness herein, and was
13 examined and testified, as follows:

14 HEARING OFFICER PALENCIA: Can you spell your name for the
15 record, please?

16 THE WITNESS: Yes, it is Norma, N-o-r-m-a, McFaddin,
17 M-c-F-a-d-d-in.

18 HEARING OFFICER PALENCIA: Thank you. You may proceed.

19 **DIRECT EXAMINATION**

20 Q BY MR. BOBBER: Ms. McFaddin, what is your job?

21 A I am the Human Resources Manager at the Bakersfield
22 facility.

23 Q And for how long have you held that particular position?

24 A A year.

25 Q Prior to becoming the HR Manager, did you hold any other

1 positions at the Bakersfield Nestlé-Dreyer's facility?

2 A Yes, I did.

3 Q For how long have you been employed at that plant?

4 A I have been there since December 27th of 1987.

5 Q And would you please give us an overview of the positions
6 that you held since your date of hire?

7 A I have had several positions, all in Human Resources,
8 involving employment, training, a little bit of workers' comp,
9 but not a whole lot. Also, Employee Relations; anything and
10 everything related to employment.

11 Q So, during your whole time at the Bakersfield plant since
12 1987, have you been in a Human Resources function?

13 A Yes, I have.

14 Q And now, as the HR Manager, what are your duties and
15 responsibilities?

16 A To manage the Human Resources Department and to provide
17 support to the entire facility, whether it relates to policies,
18 practices, procedures, employment needs, employee relations;
19 all of those things.

20 Q At the Bakersfield plant, does the Company maintain job
21 descriptions for any of the hourly positions?

22 A We do.

23 Q And how do you go about creating the job descriptions?

24 A We create them with the assistance of the manager or
25 supervisor where that position takes place.

1 Q And what purposes do you use the job descriptions for?

2 A It could be for recruiting. It could be for providing to
3 employees should they want to see it, but mostly recruiting.

4 Q Where in the facility do you maintain the job
5 descriptions?

6 A In the Human Resources office.

7 Q And are those files that are under your management?

8 A They are.

9 Q Ma'am, here is a document that I marked as Employer's
10 Exhibit No. 5.

11 **(Employer's Exhibit No. 5, marked for identification.)**

12 Q BY MR. BOBBER: Would you please look at this and tell us
13 what it is, if you know?

14 A This is a job description for an Ice Cream Maker I, which
15 has been called an ICM-1.

16 Q And the job description, does it contain -- does it show
17 us the last time that the document was revised?

18 A It does.

19 Q And for this particular Ice Cream Maker I job, when was
20 the last time that the document was revised?

21 A May 16th, 2011.

22 Q Do you have any particular recollection of what change or
23 changes were made in May of 2011?

24 A No, I don't.

25 Q And does the document now accurately describe the job

1 description of an Ice Cream Maker I?

2 A It does, as of the revised date.

3 MR. BOBBER: Madame Hearing Officer, I will offer Company
4 Exhibit No. 5.

5 HEARING OFFICER PALENCIA: Any objection?

6 MR. STERN: Voir dire, please -- oh, wait. I'm sorry, may
7 we go off the record?

8 HEARING OFFICER PALENCIA: Off the record.

9 (Off the record.)

10 HEARING OFFICER PALENCIA: Back on the record.

11 MR. BOBBER: So, an offer was made to admit it into
12 evidence.

13 HEARING OFFICER PALENCIA: Is there any objection?

14 MR. STERN: None.

15 HEARING OFFICER PALENCIA: All right, Employer's Exhibit
16 No. 5, which consists of three pages and is a job description
17 of an Ice Cream Maker I is received into evidence.

18 **(Employer's Exhibit No. 5, received into evidence.)**

19 Q BY MR. BOBBER: And ma'am, here is a multi-page document
20 marked for identification as Employer's Exhibit No. 6.

21 **(Employer's Exhibit No. 6, marked for identification.)**

22 Q BY MR. BOBBER: Would you please review that and describe
23 what it is, if you know?

24 A This is the job description for an Ice Cream Maker II,
25 also known as an ICM-2.

1 Q Okay, and is that the current job description that the
2 Company maintains for the Ice Cream Maker II position?

3 A It is.

4 Q And is it an accurate description of the Ice Cream Maker
5 II job as of today?

6 A Yes, it is.

7 MR. BOBBER: Okay, I will offer Employer's Exhibit No. 6.

8 HEARING OFFICER PALENCIA: Any objection?

9 MR. STERN: Can I just ask a couple of quick voir dire
10 questions?

11 HEARING OFFICER PALENCIA: Definitely.

12 **VOIR DIRE**

13 Q BY MR. STERN: If you will look at -- let me see if I got
14 it straight.

15 Now, and Ice Cream Maker II can do all of the functions of
16 an Ice Cream Maker I; is that correct?

17 A Yes, he can perform --

18 Q If you look at Page 2 of the Ice Cream Maker I job
19 description on Employer's Exhibit No. 5, on the bottom right,
20 there is a box next to Maintenance, Tools, and Equipment, and
21 that box is checked?

22 HEARING OFFICER PALENCIA: I don't have that page.

23 You are looking at Page 2 of 5?

24 Q BY MR. STERN: There are some boxes checked; it says
25 "Maintenance Tools and Equipment?

1 HEARING OFFICER PALENCIA: That is the third column,
2 correct?

3 MR. STERN: Yes.

4 Q BY MR. STERN: And we have the same entry on Employer's
5 Exhibit No. 7 -- I mean 6, and it is not checked. Are you sure
6 these documents are accurate?

7 A Can we see Page 2, please?

8 [Long pause.]

9 HEARING OFFICER PALENCIA: Please take your time to review
10 the document. If you need a couple of minutes, we can go off
11 the record.

12 THE WITNESS: Okay.

13 HEARING OFFICER PALENCIA: Let's go off the record.

14 (Off the record.)

15 HEARING OFFICER PALENCIA: Back on the record.

16 Q BY MR. STERN: The question that was pending was is, are
17 you sure that these documents are accurate.

18 A The Ice Cream Maker II position should have maintenance
19 equipment checked.

20 Q Do you have any explanation for why it is not there?

21 A That it is -- other than a typo --

22 Q Okay, well, as long as we are on that, if you look at the
23 -- still on the far right column down at the bottom under the
24 heading "Equipment," it says the Ice Cream Maker I is
25 responsible in some degree for the fire alarm, but that box is

1 not checked for the Ice Cream Maker II. Is that another typo?

2 A Under what category?

3 Q If you look under Equipment category, the third column on
4 the right --

5 A I see it.

6 Q Do you see a box next to Fire Alarm?

7 A Yes, I do.

8 Q For Employer's Exhibit No. 5, that box is checked. On
9 Employer's Exhibit No. 6, the Ice Cream Maker II position, it
10 is not checked.

11 I ask you again, are you sure these documents are correct?

12 A The Fire Alarm section in Section 2 should have been
13 checked, as well.

14 Q Do you know if this is a typo? Do you know how this
15 occurred if this is mistake?

16 A No, I don't know how it occurred.

17 MR. STERN: Okay, object to both of these documents.

18 HEARING OFFICER PALENCIA: I'm sorry?

19 MR. STERN: I -- you haven't offered it yet.

20 I have nothing --

21 MR. BOBBER: Yes, I offered.

22 MR. STERN: Oh, yes.

23 HEARING OFFICER PALENCIA: I'm sorry?

24 MR. STERN: I object to both of these documents. There is
25 no showing they are accurate. There is no explanation for why

1 they are not.

2 HEARING OFFICER PALENCIA: I would like to go over these
3 documents.

4 **EXAMINATION BY THE COURT**

5 HEARING OFFICER PALENCIA: Let's go to Employer's Exhibit
6 No. 5.

7 THE WITNESS: Okay.

8 HEARING OFFICER PALENCIA: I apologize. I am going to go
9 over the entire document and then -- all right. Okay, then,
10 Employer's Exhibit No. 5 is a three-page document with the
11 description of Ice Cream Maker I, and it says the issue date is
12 11-12-10.

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: What does that mean, the "issue
15 date?"

16 THE WITNESS: That means that it was initially created on
17 that date, or there was -- or it was issued to someone on that
18 date.

19 HEARING OFFICER PALENCIA: The job description?

20 THE WITNESS: Yes.

21 HEARING OFFICER PALENCIA: And then it was revised on May
22 16th, 2011?

23 THE WITNESS: Yes.

24 HEARING OFFICER PALENCIA: And then it says, "Adjust to
25 Next Review Date," it is May 16th of 2012?

1 THE WITNESS: Yes.

2 HEARING OFFICER PALENCIA: And that is the date, you will
3 review it again?

4 THE WITNESS: Yes.

5 HEARING OFFICER PALENCIA: Let's go to General Function.
6 Under General Function, we have 1.1, to rotate and operate
7 various pieces of equipment on the production line. Is that
8 accurate?

9 THE WITNESS: Yes.

10 HEARING OFFICER PALENCIA: Okay. I want you to look at
11 the Major Duties and Responsibilities. It says "follow all
12 GMP." What is GMP?

13 THE WITNESS: A GMP is a "good manufacturing practice."

14 HEARING OFFICER PALENCIA: And it is safety rules?

15 THE WITNESS: Yes. What is this, are you asking me?

16 HEARING OFFICER PALENCIA: No. I -- I just want you to
17 look at Major Duties and Responsibilities. Read those, and
18 then tell me whether those are accurate. Whether those are
19 accurate. Take your time.

20 [Long pause.]

21 HEARING OFFICER PALENCIA: 2.9, what is NCE?

22 THE WITNESS: That is Nestlé Continuous Excellence.

23 HEARING OFFICER PALENCIA: Oh, thank you.

24 And 2.10, MCP refers to?

25 THE WITNESS: It is the way that we do our quality checks.

1 HEARING OFFICER PALENCIA: Do you know what the --

2 THE WITNESS: I don't know what the acronym stands for.

3 HEARING OFFICER PALENCIA: Okay. Let me know once you are
4 done reading the Major Duties and Responsibilities.

5 THE WITNESS: I am done.

6 HEARING OFFICER PALENCIA: And is that accurate?

7 THE WITNESS: Yes.

8 HEARING OFFICER PALENCIA: And then we have Contact with
9 Others, the description below that, is that accurate?

10 THE WITNESS: Yes.

11 HEARING OFFICER PALENCIA: And to the best of your
12 knowledge, No. 4, [indiscernible] Functions and Assessment, and
13 aside from the ones that have been pointed out to you by Mr.
14 Stern -- sorry, not in this document.

15 Look at this document and tell me whether that something
16 hasn't been checked off that should be checked off, and also
17 check whether something has been checked that should not be
18 checked off.

19 MR. STERN: You know, I'm sorry. It occurs to me that
20 there is no foundation that this person has first-hand personal
21 knowledge of the duties that go with these jobs. There is no
22 foundation for that. Just raising that, and I therefore would
23 object.

24 HEARING OFFICER PALENCIA: You are objecting, as well to
25 the introduction of the evidence, but you are saying that these

1 statements made, that the information contained in here, that
2 she has no knowledge of whether these people actually performed
3 those duties?

4 MR. STERN: My recollection is that she was simply asked
5 whether this depicts the job. I don't believe she was ever
6 asked any foundational questions as to whether or not she has
7 personal knowledge of the job duties, in apparently each and
8 everyone of these classifications, so I don't think her
9 testimony has any foundation.

10 Her testimony is she has always worked in HR. She didn't
11 do any of these jobs.

12 I just don't think there is a foundation that she has got
13 personal knowledge of about what she is testifying right now.

14 HEARING OFFICER PALENCIA: Okay, we can definitely explore
15 whether there is personal knowledge there or maybe another
16 witness, but as far as getting -- the job description is
17 relevant to this proceeding and to your knowledge, is this the
18 job description that is handed out?

19 THE WITNESS: Yes, for Ice Cream Maker I.

20 HEARING OFFICER PALENCIA: For Ice Cream Maker I.

21 THE WITNESS: Yes.

22 HEARING OFFICER PALENCIA: And are you involved with the
23 interviewing process?

24 THE WITNESS: Yes.

25 HEARING OFFICER PALENCIA: To what extent?

1 THE WITNESS: Currently, I am not interviewing, but I have
2 interviewed for Ice Cream Maker I.

3 HEARING OFFICER PALENCIA: And is there anything on this
4 -- I would ask the question, is there anything in this job
5 description that seems inaccurate to you, that seems
6 inaccurate, that should have been included, to your knowledge?

7 THE WITNESS: No.

8 HEARING OFFICER PALENCIA: So, if we can -- do you have
9 any objection to this being introduced into evidence, for the
10 purposes only of, that this is a -- the job description that --
11 that the job description is in use at the facility, not for the
12 purposes that what is contained in the job description is
13 actually being performed by the employee. This is -- this is
14 the accurate job description. We can have either her, once a
15 foundation has been stabled, whether she knows that this is
16 what employees are required to do, or if there can be another
17 supervisor?

18 MR. STERN: Maybe I can just ask a couple questions on
19 voir dire, and maybe we can --

20 HEARING OFFICER PALENCIA: Okay.

21 **FURTHER VOIR DIRE**

22 Q BY MR. STERN: First of all, you have never worked as an
23 Ice Cream Maker I or II; is that correct?

24 A I have never held a position as Ice Cream Maker I or II.

25 Q Okay.

1 A I have been out on the production line.

2 Q Okay. When is the last time you interviewed somebody
3 personally for an Ice Cream Maker I job?

4 A About a year and a half or two years ago.

5 Q Before this document, Employer's Exhibit No. 5 was in its
6 current form, correct?

7 A Yes.

8 Q And you haven't interviewed anybody for an Ice Cream Maker
9 I or II job since November 12th, 2010; is that correct?

10 A Have not.

11 Q Okay. I just have one other question.

12 Do you have personal first-hand knowledge of all of the
13 duties of an Ice Cream Maker I?

14 A Yes, I do.

15 Q Okay. Do you know who created the most recent version of
16 Employer's Exhibit No. 5?

17 A It would have been someone in my office. I don't know
18 exactly who did it.

19 Q Okay, and according to your prior testimony, somebody
20 named Char would have worked in conjunction with the
21 supervisors and the managers over this position, right?

22 A Yes.

23 Q And you don't -- and as you sit here today, you don't know
24 of your own personal knowledge why some functions are listed on
25 the Ice Cream Maker I description that are not on the Ice Cream

1 Maker II position, correct?

2 A I know that it is an error.

3 Q Okay, then how do you know -- you don't know who made the
4 error, correct?

5 A No, I don't.

6 Q You don't know when the error was made, correct?

7 A (No response.)

8 Q Well, I mean, we can all read the date on the document,
9 but you don't have any personal knowledge of when this so-
10 called error was made, do you?

11 A No, I don't.

12 Q In fact, you don't even know if whoever did it, did it
13 intentionally or by mistake, correct?

14 A I don't know who did it.

15 Q So, at the end of the day, you don't know if this
16 description is accurate, correct?

17 A I do know that.

18 MR. STERN: Okay, I have nothing further.

19 I -- I have no problem with it being admitted for the
20 purpose that you stated, which is not that this accurately
21 depicts the actual job. Just that this what the Company uses
22 to fill a position or whatever.

23 I have no problem admitting it for that, but I have a huge
24 problem admitting it for the truth of the matter asserted
25 therein.

1 HEARING OFFICER PALENCIA: My suggestion is that the --
2 you know, that there is no objection that this is the -- this
3 is the job description that is maintained by the Company. This
4 is what is handed out, and this witness may well know, have
5 personal knowledge of each of these duties, but we -- that can
6 be established in the record or through another witness.

7 At this time, can you -- what is your purpose for
8 introducing the document? Is it -- is it to assert that the
9 description is an accurate description of what they do, they
10 actually do?

11 MR. BOBBER: Certainly multiple purposes, including that
12 one, yes, Madame Hearing Officer. I mean, the company may be
13 subject to human error and something short of perfection. The
14 Company does desire to document in job descriptions what it
15 envisions to be the duties and responsibilities of the
16 position, and then use that documentation to assess candidates,
17 fill the job, and the like, and so, yes, I do offer it for the
18 purpose of confirming to the record that it is an inaccurate
19 description of the Company's view of the duties and
20 responsibilities of the position, yes.

21 HEARING OFFICER PALENCIA: I am going to receive
22 Employer's Exhibit No. 5, which is the --

23 THE COURT REPORTER: Exhibit No. 5 is already in --

24 HEARING OFFICER PALENCIA: It is already in. It has been
25 received into evidence, and to the extent, I think either

1 Employer's Counsel will definitely ask the witnesses about the
2 duties and responsibilities, and other information contained in
3 these job descriptions, okay?

4 So, let's continue to Employer's Exhibit No. 2, which has
5 not been received into evidence.

6 THE COURT REPORTER: Exhibit No. 6?

7 HEARING OFFICER PALENCIA: Sorry, Employer's Exhibit No.
8 6, thank you, Employer's Exhibit No. 6.

9 **FURTHER EXAMINATION BY THE COURT**

10 HEARING OFFICER PALENCIA: I want you to -- have you seen
11 this document before?

12 THE WITNESS: Yes, I have.

13 HEARING OFFICER PALENCIA: And you have seen Document No.
14 5 before?

15 THE WITNESS: Yes, I have.

16 HEARING OFFICER PALENCIA: And to your knowledge, this is
17 the document that is distributed by the Company?

18 THE WITNESS: Yes, it is.

19 HEARING OFFICER PALENCIA: Okay. And aside from Page 6,
20 where Fire Alarms, Tools and Maintenance should have been
21 checked and wasn't checked, I want you to review this document
22 and tell me whether there is anything else that you see, any of
23 the boxes that was checked and shouldn't have been checked.
24 [Long pause.]

25 HEARING OFFICER PALENCIA: Let's go off the record.

1 (Off the record.)

2 HEARING OFFICER PALENCIA: Back on the record.

3 Have you finished?

4 THE WITNESS: Uh-huh.

5 HEARING OFFICER PALENCIA: Okay, after reviewing
6 Employer's Exhibit No. 6, did you find any other errors?

7 THE WITNESS: The ones that are on Page 4 and 5, where the
8 -- under Mental Requirements, Reading - Simple & Complex,
9 Writing - Simple & Complex, Clerical --

10 HEARING OFFICER PALENCIA: Okay, let's go one by one.

11 THE WITNESS: Okay.

12 HEARING OFFICER PALENCIA: Under Physical Requirements, is
13 there anything that needs to be corrected there, to your
14 knowledge?

15 THE WITNESS: No.

16 HEARING OFFICER PALENCIA: And under Work Environment?

17 THE WITNESS: Fumes and odors needs to be checked.

18 HEARING OFFICER PALENCIA: Okay. Under Mental
19 Requirements?

20 THE WITNESS: Under Mental, Reading Conflicts.

21 HEARING OFFICER PALENCIA: That needs to be checked?

22 THE WITNESS: Yes.

23 HEARING OFFICER PALENCIA: Okay.

24 THE WITNESS: Writing Conflicts needs to be checked.

25 Clerical needs to be checked, and we can go back to Physical

1 Requirements, Driving should be checked, as well.

2 HEARING OFFICER PALENCIA: Okay, and then under Equipment?

3 THE WITNESS: Equipment?

4 HEARING OFFICER PALENCIA: Aside from Fire Alarm and
5 Maintenance, Tools and Equipment?

6 THE WITNESS: No.

7 HEARING OFFICER PALENCIA: And I believe that Employer's
8 Counsel made a motion to receive this into evidence; is that
9 correct?

10 MR. BOBBER: Yes.

11 HEARING OFFICER PALENCIA: Any objection?

12 MR. STERN: Same objection as previously entered with
13 respect to [indiscernible] -- same language, let's move on.

14 HEARING OFFICER PALENCIA: All right, so -- you know, it
15 is relevant to the proceeding and then hopefully we will get
16 into getting first-hand knowledge.

17 It is received into evidence.

18 **(Employer's Exhibit No. 6, received into evidence.)**

19 THE COURT REPORTER: It is received?

20 HEARING OFFICER PALENCIA: Yes.

21 THE COURT REPORTER: Thank you.

22 HEARING OFFICER PALENCIA: Before you proceed, real quick,
23 Employer's Exhibit No. 5, it was revised. Do you know what
24 revision was made to the document?

25 THE WITNESS: No, I don't.

1 HEARING OFFICER PALENCIA: Same with Employer's Exhibit
2 No. 6.

3 THE WITNESS: I don't.

4 HEARING OFFICER PALENCIA: Mr. Bobber?

5 **CONTINUING DIRECT EXAMINATION**

6 Q BY MR. BOBBER: Okay, here, ma'am, is a multi-page
7 document marked Employer's Exhibit No. 7.

8 **(Employer's Exhibit No. 7, marked for identification.)**

9 Q BY MR. BOBBER: Would you please review that and identify
10 what it is, if you know?

11 A It is the job description for the Mix Room person, the Mix
12 Maker.

13 Q And is this the current job description that the Company
14 maintains in relation to the Mix Maker job?

15 A It is.

16 Q And do you have knowledge about what job duties the Mix
17 Maker does?

18 A I do.

19 Q And how do you know what the Mix Maker does?

20 A Some observation and talking with people.

21 Q What kind of people?

22 A Mix Makers and/or supervisors.

23 Q And for what purposes does the Company use this Mix Maker
24 job description?

25 A Well, for either the recruiting, or if employees ask for a

1 copy of their job description.

2 MR. BOBBER: Okay, I will offer Employer's Exhibit No. 7.

3 HEARING OFFICER PALENCIA: Can you look at Page 5 of
4 Employer's Exhibit No. 7?

5 Take your time and tell me whether there is anything that
6 should be marked there that was not marked.

7 [Long pause.]

8 THE WITNESS: Do you want me to go section by section?

9 HEARING OFFICER PALENCIA: Sure, if there was something in
10 that section.

11 Physical Requirement?

12 THE WITNESS: Planning is to be checked.

13 HEARING OFFICER PALENCIA: I'm sorry, oh, okay.
14 So, should Smelling be checked?

15 THE WITNESS: Smelling for Cleanliness, yes.

16 Under Work Environment, Fumes and Odors, again.

17 HEARING OFFICER PALENCIA: Okay.

18 THE WITNESS: Under Mental Requirements, everything in
19 there should be checked.

20 Under Equipment Maintenance, Tools and Equipment should be
21 checked.

22 I believe that is it.

23 HEARING OFFICER PALENCIA: Any objection to the -- to
24 Employer's Exhibit No. 7, which is a total of is pages being
25 received into evidence?

1 Same objection?

2 MR. STERN: Same objection, same ruling; let's move.

3 HEARING OFFICER PALENCIA: It is received into evidence.

4 **(Employer's Exhibit No. 7, received into evidence.)**

5 Q BY MR. BOBBER: Ms. McFaddin, I have handed you a multi-
6 page document marked Employer's Exhibit No. 8.

7 **(Employer's Exhibit No. 8, marked for identification.)**

8 Q BY MR. BOBBER: Would you please review that and identify
9 what it is, if you know?

10 A It is a job description for Maintenance I.

11 Q And is this the job description for the Maintenance I
12 position that the company currently maintains?

13 A It is.

14 Q And for what purpose do you use this Maintenance I job
15 description for?

16 A Again, for recruiting, and to provide to employees if they
17 request.

18 Q Do you, ma'am, have any personal knowledge of the job
19 duties and responsibilities of employees in the Maintenance I
20 job classification?

21 A I do.

22 Q And how do you have that?

23 A Again, from talking to employees. Form talking o
24 supervisors.

25 Q And when you say talking to employees, do you mean

1 Maintenance I employees?

2 A Yes.

3 Q From the -- well, strike that.

4 MR. BOBBER: I will offer Employer's Exhibit No. 8.

5 MR. STERN: No objection.

6 HEARING OFFICER PALENCIA: It is received into evidence.

7 **(Employer's Exhibit No. 8, received into evidence.)**

8 HEARING OFFICER PALENCIA: And I should have asked, does
9 this look like an accurate description of the Maintenance I?

10 THE WITNESS: Yes, it does.

11 Q BY MR. BOBBER: And I understand in the maintenance jobs,
12 there is also a Maintenance II job?

13 A That's correct.

14 Q And in preparation for the hearing, were you able to find
15 a job description for Maintenance II that you considered to be
16 an accurate representation of Maintenance II?

17 A I did not.

18 Q Okay.

19 HEARING OFFICER PALENCIA: With regard to Employer's
20 Exhibit No. 8, this job description, does it apply to Utility
21 groups, shop employees, line Mechanics?

22 THE WITNESS: It is for maintenance employees that are
23 considered to Level 7. We haven't talked about Level 7 but it
24 is the employees that are on the production floor.

25 HEARING OFFICER PALENCIA: And could this description

1 potentially apply to utility group employees?

2 THE WITNESS: I am looking to see if it has anything
3 related to ammonia processes or systems --

4 HEARING OFFICER PALENCIA: Strike that.

5 Is there a separate job description, to your knowledge,
6 maintained in the Human Resources Department for Utility group
7 employees?

8 THE WITNESS: We would have to have one, yes.

9 HEARING OFFICER PALENCIA: And what about shop employees?

10 THE WITNESS: It is a different skills set, yes.

11 HEARING OFFICER PALENCIA: And line Mechanics?

12 THE WITNESS: This would be for line Mechanics.

13 HEARING OFFICER PALENCIA: This would be for line
14 Mechanics, okay. Please proceed.

15 Q BY MR. BOBBER: Ms. McFaddin, does the Company maintain
16 any personnel policies that relate to the hourly employees at
17 the Bakersfield plant?

18 A We do.

19 Q And do you publish those in any written form?

20 A Yes, we do.

21 Q And give us some description, how do you do that?

22 A We have an employee handbook. We also provide that in a
23 PowerPoint presentation. We provide that to employees. We
24 review it with employees for understanding, and we do that so
25 they have a good understanding of what the guidelines are.

1 MR. STERN: I would stipulate that this is a true and
2 correct copy of the employees handbook and may be admitted.

3 HEARING OFFICER PALENCIA: Are you moving this into
4 evidence?

5 MR. BOBBER: Yes, please, as Employer's Exhibit No. 9.
6 **(Employer's Exhibit No. 9, marked for identification.)**

7 HEARING OFFICER PALENCIA: Okay, there is a stipulation
8 that it is relevant, and that it is a true and correct copy, so
9 it is received into evidence.

10 **(Employer's Exhibit No. 9, received into evidence.)**

11 Q BY MR. BOBBER: Okay, Ms. McFaddin, with respect to the
12 various Company policies in the employee handbook, do those
13 policies apply to the production, the hourly production
14 employees?

15 A Yes, they do.

16 Q Do they apply to the hourly maintenance employees?

17 A Yes, they do.

18 Q And is there any distinction in how the policies apply to
19 the employees, those that are articulated in the handbook?

20 A Yes, there is.

21 Q What is the distinction between how they might apply to
22 production or maintenance employees?

23 A There is a section in the handbook that talks about 5-8
24 employees and 4-10 employees, which specifically addresses the
25 people who work a 8-5 schedule, or they work a 4-10 schedule,

1 and it talks about how we pay those people differently.

2 Q And so a 5-8 is a person that works Monday -- five days a
3 week, eight hours a day?

4 A That is their scheduled. It could be that they work a
5 little bit more or a little bit less, depending on what we are
6 doing.

7 Q And the 5-8 is somebody that is scheduled to work four
8 days a week -- I mean, the 4-10, but ten hours each of those
9 days?

10 A Right, and then the other difference is how they are paid.

11 Q And what is that difference, ma'am?

12 A The difference I the 5-8 employees are paid overtime on
13 reaching eight hours a day or forty in a week, whichever comes
14 first. The 4-10 employees are paid overtime on ten hours a day
15 or forty in a week, whichever comes first.

16 Q I see. And from your general recollection about the
17 handbook, are there other policies articulated in the handbook
18 that may apply differently to maintenance people, compared to
19 production people:

20 A Yes.

21 Q What would that be?

22 A That would be sick hours.

23 Q How so?

24 A They have a sick total of five days of sick hours that are
25 provided to employees, so production employees or people who

1 work a 5-8 schedule would get forty hours. Employees who work
2 a 4-10 schedule would work fifty hours because it is five days,
3 so five days at ten hours or five days at eight hours.

4 Q Okay. Same question then. Can you think of any way which
5 policies articulated in the handbook may apply differently to
6 maintenance employees compared to production employees?

7 A I am trying to think of -- I really just has to do with
8 anything that is a scheduled day that is a 4-10 day or a 5-8
9 day, so when maintenance employees take a holiday and they are
10 working a five-day schedule, they would get paid on an eight-
11 hour day. If it is a 4-10 schedule, they would get paid on a
12 ten-hour day, because they would normally work the ten hours.

13 [Long pause.]

14 Q The Company publishes in its handbook an Equal Employment
15 Opportunity statement or policy; is that right?

16 A Yes.

17 Q Does that apply equally to maintenance and production
18 employees?

19 A Absolutely.

20 Q Does the Company publish in its handbook an anti-
21 harassment workplace environment policy?

22 A Yes.

23 Q Is there any different application to that policy to
24 production compared to maintenance employees?

25 A No.

1 Q Does the Company publish in a handbook a controlled
2 substance policy?

3 A Yes.

4 Q Does that have similar or different applications between
5 production and maintenance employees?

6 A Yes.

7 Q Does the Company have an attendance policy?

8 A Yes.

9 Q Do you publish that in the handbook?

10 A Yes.

11 Q Does that apply in any different manner to maintenance
12 employees compared to production employees?

13 A No.

14 Q On Page 18 of your handbook, there the Company articulates
15 a corrective action or disciplinary policy; is that right?

16 A Yes.

17 Q And does that apply any differently to maintenance
18 employees compared to production employees?

19 A No.

20 Q Ms. McFaddin, other than what you told us about with
21 respect to policies that may relate to scheduling, whether
22 someone is on a 5-8 schedule or a 4-10 schedule, other than
23 those things, are there any company policies articulated in the
24 employee handbook that would have any different application to
25 maintenance employees compared to production employees, and

1 take your time to flip through, if you need to?

2 A Okay.

3 [Long pause.]

4 A The other thing that I see is on department seniority.

5 HEARING OFFICER PALENCIA: What page are you looking at?

6 THE WITNESS: Page 6.

7 HEARING OFFICER PALENCIA: Thank you.

8 Q BY MR. BOBBER: And on that particular policy, could you
9 explain to us please how that might have difference application
10 to maintenance employees compared to production employees?

11 A I'm sorry, I was confused. I believe that is it.

12 Q Does the Company provide to its hourly employees any
13 employee benefits?

14 A Yes.

15 Q What types of employee benefits does the Company provide?

16 A Medical, dental, vision, pension, retirement, 401-k,
17 flexible spending account, education reimbursement, formula --
18 coupons for formula.

19 Q Baby formula?

20 A Yes.

21 Q Time off for -- paid time for child bonding.

22 HEARING OFFICER PALENCIA: For what?

23 THE WITNESS: Child bonding.

24 Life insurance, long-term disability, short-term
25 disability, vacation, shift differential, cold pay.

1 Q BY MR. BOBBER: Cold pay, is that extra pay that somebody
2 gets if they are working in the freezer?

3 A Yes.

4 Q Okay.

5 A I am sure I missed one or two.

6 Q Okay. Of any of those employee benefits that you
7 identified, is there any different application of the benefit
8 to maintenance employees at the plant, compared to production
9 employees?

10 A The only one that I mentioned earlier was the holiday pay,
11 and that is just because it is five hours versus ten hours.
12 Other than that, no.

13 Q In terms of, for example, eligibility requirements for
14 things like medical and dental and vision, life insurance, or
15 any other benefits you identified, are there any different
16 eligibility requirements if somebody is a maintenance employee
17 compared to somebody who is a production employee?

18 A No.

19 Q And I think it was Mr. Stern who pointed out earlier the
20 maintenance employees receive a benefit called tool allowance,
21 right?

22 A They do.

23 Q And do you know off the top of your head, what is the
24 value of that benefit, or the quantity or amount?

25 A I'm sorry, I don't.

1 Q But in any event, that is something that the production
2 employees do not get; is that correct?

3 A That's correct.

4 Q A few minutes ago you referenced the levels 5 and other.
5 Let's get into that now and make the record clear on that,
6 please.

7 What were the levels that you were referring to?

8 A We have levels of pay for people in different job
9 classifications, so an Ice Cream Maker, someone who is being
10 hired into the entry-level position, would be a -- would be at
11 the entry level rate. That would be an Ice Cream Maker I.

12 And Ice Cream Maker II would make more than an Ice Cream
13 Maker I; Mix Makers would make more than an Ice Cream Maker I
14 and an Ice Cream Maker II, and then an entry-level maintenance
15 person could make the same as a Mix Maker, and the same as an
16 Ice Cream Maker II, and a Level 6 can make more than all of the
17 ones I just mentioned, and a Level 7 can make more than all of
18 the other ones, and then a Level 8 would make the top of the
19 pay.

20 Q Okay, so these are essentially different pay levels and
21 the increasing level number reflects generally increasing
22 hourly wages?

23 A That's correct.

24 HEARING OFFICER PALENCIA: We are at 10, right?

25 MR. BOBBER: Yes.

1 Q BY MR. BOBBER: Here is a single-page document marked
2 Employer's Exhibit No. 10.

3 **(Employer's Exhibit No. 10, marked for identification.)**

4 Q BY MR. BOBBER: Would you please review that and tell us
5 what it is, if you know?

6 A It is the 2011 wage chart, which is the structure that I
7 was trying to explain a minute ago.

8 Q And the chart shows wages applicable to what jobs, ma'am?

9 A Applicable to Ice Cream Maker I, Ice Cream Maker II, Mix
10 Makers and Pre-level Maintenance Mechanics, Maintenance
11 Mechanics are either craft workers or group leaders, or
12 Maintenance Control Technicians.

13 Q And on the bottom half of this one-page document, that
14 section is for maintenance, correct?

15 A Yes, so the heading is Maintenance, and then it has the
16 job title and hire rate, A, B, C. Those would all be
17 maintenance-related jobs.

18 Q And are all of the hourly jobs in Maintenance reflected in
19 one of those four rows of entry or Maintenance Technician,
20 Maintenance Craft Worker, Maintenance Group Leader, Maintenance
21 Control Tech?

22 A If they are hourly, yes. I couldn't remember if I heard
23 you say hourly, but yes.

24 Q Okay, that is all of the hourly positions?

25 A Yes.

1 Q And at least on the production floor in the Business
2 Units, up here at the top half of the document, are those all
3 of the hourly production jobs?

4 A Yes. They are all of the hourly manufacturing, pre-
5 manufacturing, all of the other -- if it is not a maintenance
6 job, it is another hourly job.

7 Q And of those job titles listed on the top half of the
8 page, which ones are out of the Pre-Manufacturing Group?

9 A That would be the Warehouse Specialist and the Mix Room
10 position.

11 Q I see.

12 MR. BOBBER: Ms. Palencia, I will offer Employer's Exhibit
13 No. 10.

14 MR. STERN: No objection.

15 HEARING OFFICER PALENCIA: Hearing no objection, it is
16 received into evidence.

17 **(Employer's Exhibit No. 10, received into evidence.)**

18 HEARING OFFICER PALENCIA: Can I get a stipulation here?
19 On Ice Cream Maker II, I am getting Warehouse Specialist,
20 Palletizer Specialist, Sanitation; are all -- are these people
21 being petitioned for? They are not, right?

22 MR. STERN: Not in our version.

23 HEARING OFFICER PALENCIA: Right.

24 MR. STERN: We are not petitioning for any production
25 people.

1 HEARING OFFICER PALENCIA: Okay, so --

2 MR. BOBBER: But, ma'am, those are Production Department
3 employees, hourly Production Department employees, in the
4 578 number that we gave you at the outset of the day.

5 HEARING OFFICER PALENCIA: So, can we have a stipulation
6 here, that with respect to the Warehouse Specialists, the
7 Palletizing Specialist, the Sanitation, listed on Employer's
8 Exhibit No. 10, these classifications are not being petitioned
9 for by the Petitioner, however they are part of the production
10 employees, and part of the 578 number in Board Exhibit No. 2,
11 and they are included in the unit that the Employer is asking
12 for?

13 MR. BOBBER: Correct.

14 MR. STERN: Yes.

15 HEARING OFFICER PALENCIA: Okay, the stipulation is
16 received into the record.

17 You may proceed.

18 MR. BOBBER: Okay.

19 Q BY MR. BOBBER: Ms McFaddin, when Mr. Pritchard was
20 testifying, one of the issues may have been left open, and I
21 want to ask you about it, and the question was, of the 113
22 hourly employees in the maintenance group that we are talking
23 about here today, how many of those employees came into their
24 maintenance jobs after having been employed in a production job
25 at the plant?

1 A About fifty percent.

2 Q And does the Company undertake any effort to assist
3 production workers in the movement from their production jobs
4 into maintenance jobs?

5 A We provide opportunities to all employees who have an
6 interest in going into a maintenance job. If they want to
7 continue their education, they are eligible for the same
8 benefits. If they want to take classes to put them in a better
9 position, so if there is an opening, that they can apply for
10 it. If that is assisting, that is what we do.

11 Q And that is with that tuition reimbursement benefit that
12 you have talked about?

13 A Correct.

14 Q The education benefit?

15 A Correct.

16 Q And can you give us just a little detail on that? Would
17 you describe what is the Company's tuition reimbursement
18 benefit available to hourly employees at the Bakersfield plant?

19 A It is the same tuition reimbursement for everybody at the
20 facility, and it is open for people who want to further their
21 knowledge, whether they are working on a degree or just working
22 on taking classes up to a -- at one of the local colleges, like
23 the maintenance people do. It provides some of that
24 opportunity to gain that knowledge, and put themselves in a
25 better position for qualifying for a higher paying job.

1 Q And in terms of the benefit itself, what does the Company
2 pay for?

3 A We pay up to -- the policy changed in January. There is
4 no limit as to what the Company pays for. For example, if
5 somebody wants to work faster to get their degree, there is no
6 limit. The Company will pay a hundred percent up to -- I can't
7 remember the dollar amount, I'm sorry. At some point it drops
8 to fifty percent.

9 Q During your tenure of employment at the Bakersfield plant,
10 has the Company been involved in labor relationships with
11 unions?

12 MR. STERN: I am going to object. That is a vague
13 question. I think the only thing that is relevant is if a
14 union represented employees at this plant. I don't know what
15 "involvement" and all of that means; I object. It is vague and
16 also not probative, overbroad.

17 HEARING OFFICER PALENCIA: If we are trying to get to a
18 collective bargaining relationship, I think that is really
19 relevant here. We can just go into it and see if there is
20 knowledge of that, if that is where we are going. Is that the
21 purpose of the question.

22 I will allow it.

23 MR. BOBBER: Yeah.

24 HEARING OFFICER PALENCIA: Overruled.

25 Q BY MR. BOBBER: So, has the -- I'm sorry, I probably won't

1 state this precisely the way I stated it three minutes ago, but
2 does -- during your tenure, did the Company have any
3 relationship with a union, any labor contract with a union?

4 A Yes.

5 Q And when was that, ma'am?

6 A That was starting in 1988.

7 Q And did the Company maintain any labor relationship with
8 the Union?

9 A Yes, we did.

10 Q And where did you keep those documents?

11 A I stored the documents in outside storage.

12 Q And in anticipation for today's hearing, did you access
13 those documents?

14 A I retrieved them from a storage.

15 [Long pause.]

16 MR. STERN: Can we go off the record for a second?

17 HEARING OFFICER PALENCIA: Off the record.

18 (Off the record.)

19 HEARING OFFICER PALENCIA: Back on the record.

20 Okay, during off the record discussions, the parties were
21 able to stipulate to certain Employer exhibits. Let's start
22 with those exhibits.

23 I believe the first exhibit is Exhibit No. 11.

24 **(Employer's Exhibit No. 11, marked for identification.)**

25 HEARING OFFICER PALENCIA: Mr. Bobber, is that a

1 Collective Bargaining Agreement? Is that correct?

2 MR. BOBBER: Yes.

3 MR. STERN: Yes.

4 HEARING OFFICER PALENCIA: And it is a Collective
5 Bargaining Agreement with General Teamsters and Local Food
6 Processing No. 87, and Carnation Company, Bakersfield Ice Cream
7 Processing Facility.

8 MR. BOBBER: Yes.

9 HEARING OFFICER PALENCIA: Okay. And there is a
10 stipulation that this document is relevant to this proceeding,
11 and this is an authentic, true and correct copy of that
12 Collective Bargaining Agreement.

13 MR. STERN: Yes.

14 HEARING OFFICER PALENCIA: The parties hereby so
15 stipulate.

16 MR. BOBBER: Yes.

17 HEARING OFFICER PALENCIA: Employer's Exhibit No. 11 is
18 received into evidence.

19 **(Employer's Exhibit No. 11, received into evidence.)**

20 HEARING OFFICER PALENCIA: I am assuming we are going to
21 have testimony with regards to Carnation Company, or that
22 employer named in this particular agreement.

23 MR. STERN: We can provide a stip to it, if you want.

24 MR. BOBBER: Yes, that is a predecessor to our company.

25 HEARING OFFICER PALENCIA: Okay, go ahead and make an

1 offer of stipulation into the record.

2 MR. BOBBER: That the current employer is a successor in
3 interest to the Carnation Company. That is just a predecessor
4 company --

5 HEARING OFFICER PALENCIA: That is named in Employer's
6 Exhibit No. 11?

7 MR. STERN: Yes.

8 HEARING OFFICER PALENCIA: Hearing no objection, the
9 stipulation is received into the record.

10 The next document has been marked as Employer's Exhibit
11 No. 12.

12 **(Employer's Exhibit No. 12, marked for identification.)**

13 HEARING OFFICER PALENCIA: This is an Unfair Labor
14 Practice charge filed with Region 31, and the parties agree to
15 the relevancy of this document, and its authenticity, and there
16 are no objections, correct?

17 MR. STERN: Correct.

18 MR. BOBBER: Correct.

19 HEARING OFFICER PALENCIA: The Employer's Exhibit No. 12
20 is received into evidence.

21 **(Employer's Exhibit No. 12, received into evidence.)**

22 HEARING OFFICER PALENCIA: Okay, Employer's Exhibit No.
23 13. I don't have a copy of Employer's Exhibit No. 13 in front
24 of me, but Employer's Exhibit No. 13 is actually -- it is
25 actually marked Employer's Exhibit No. 13(a) and 13(b).

1 **(Employer's Exhibit No. 13, marked for identification.)**

2 HEARING OFFICER PALENCIA: Employer's Exhibit No. 13(a) is
3 a petition, in 31-RC-6878, and it is -- and 13(b) is the First
4 Amended Petition, and this is for the same employer that is
5 named -- the same employer that was party to Employer's Exhibit
6 No. 11, the Collective Bargaining Agreement, correct?

7 MR. STERN: Yes.

8 MR. BOBBER: Yes.

9 HEARING OFFICER PALENCIA: And just -- can we get a
10 stipulation that the unit petitioned-for is the unit for which
11 is the unit -- for which the contract, Employer's Exhibit No.
12 11, applies to?

13 MR. STERN: Yes.

14 MR. BOBBER: Yes.

15 HEARING OFFICER PALENCIA: Okay, hearing no objections,
16 the stipulation is received into evidence, as well as
17 Employer's Exhibit No. 13(a) and (b).

18 **(Employer's Exhibit No. 13, received into evidence.)**

19 HEARING OFFICER PALENCIA: Okay, the next document is a
20 double-sided document marked as Employer's Exhibit No. 14(a)
21 through (e).

22 **(Employer's Exhibit No. 14, marked for identification.)**

23 HEARING OFFICER PALENCIA: This is a stipulated election
24 agreement, as well as Certification of Conduct of an Election
25 and the tally of ballots, in 31-RC-6878, and the parties have

1 stipulated to the relevancy of this document's authenticity,
2 and is that correct, Mr. Bobber?

3 MR. BOBBER: Yes, ma'am.

4 HEARING OFFICER PALENCIA: And Mr. Stern?

5 MR. STERN: Yes.

6 HEARING OFFICER PALENCIA: Hearing no objections,
7 Respondent's Exhibit No. 14(a) through (f) is received into
8 evidence.

9 MR. BOBBER: May I just mention, though, that there are
10 seven sides to that, so it would go 14(a) through (f).

11 HEARING OFFICER PALENCIA: Correct.

12 **(Employer's Exhibit No. 14, received into evidence.)**

13 HEARING OFFICER PALENCIA: And the next document is
14 Employer's Exhibit No. 15.

15 **(Employer's Exhibit No. 15, marked for identification.)**

16 HEARING OFFICER PALENCIA: This is a Circuit Decision.
17 Will the parties stipulate to that?

18 MR. STERN: Yes.

19 MR. BOBBER: Yes.

20 HEARING OFFICER PALENCIA: Okay, that is received into
21 evidence.

22 **(Employer's Exhibit No. 15, received into evidence.)**

23 HEARING OFFICER PALENCIA: Can we proceed?

24 MR. STERN: Can I offer a stipulation that the Board
25 voided the Collective Bargaining Agreement, Employer's Exhibit

1 No. 11, in the Decision on the Unfair Labor Practice charge,
2 which is Company [indiscernible].

3 MR. BOBBER: Madame Hearing Officer, I believe that to be
4 correct, and we will look forward to discussing the particulars
5 of the Board Decision in our post-hearing brief after I have it
6 back in front of me. I don't have it here with me now.

7 HEARING OFFICER PALENCIA: Sure, you believe it correct,
8 but would you stipulate to that?

9 MR. BOBBER: No, I would prefer not to. I would want to
10 be careful.

11 HEARING OFFICER PALENCIA: Any other stipulations that are
12 being offered at this time?

13 MR. BOBBER: No.

14 MR. STERN: I don't think so.

15 [Long pause.]

16 MR. BOBBER: May I proceed?

17 HEARING OFFICER PALENCIA: Yes.

18 Q BY MR. BOBBER: Ms. McFaddin, after the Sixth Circuit
19 Court of Appeals Decision regarding the election was issued,
20 after that date, did the plant experience any subsequent union
21 organizing effort?

22 A Yes, we did.

23 Q When was that?

24 A That was in 1999.

25 Q And what union was attempting to organize the employees in

1 1999?

2 A That was UFCW, United Food and Commercial Workers.

3 Q And was there an election?

4 A There was, and at that time, they were looking to
5 represent the maintenance and hourly production employees, as
6 well.

7 Q So, was the proposed unit in that case, maintenance and
8 production?

9 A Yes, it was.

10 Q And the result of that vote?

11 A The Company won that vote.

12 [Long pause.]

13 MR. BOBBER: I don't have any further questions on direct.

14 **CROSS EXAMINATION**

15 Q BY MR. STERN: The entire time you have been with your
16 company, there has never been a valid Collective Bargaining
17 Agreement with any labor organization; is that correct?

18 MR. BOBBER: Objection, calls for a legal conclusion
19 asking the lay witness to determine --

20 MR. STERN: I will withdraw and I will break it down.

21 Q BY MR. STERN: You were employed by the Company in an HR
22 function during 1988 -- since 1988 or 1987, correct?

23 A Yes, correct.

24 Q And you have personal knowledge because you were there,
25 that the NLRB voided the Collective Bargaining Agreement

1 between your company and Teamsters Local 87, correct?

2 MR. BOBBER: Again, objection; calls for a legal
3 conclusion. Still asking the lay witness to determine the
4 impact -- voided is a legal term of art, and we are asking --
5 the question asked the lay witness to determine if that is what
6 the Labor Board --

7 HEARING OFFICER PALENCIA: Rephrase.

8 Q BY MR. STERN: Were you around when the NLRB issued some
9 decision with respect to that contract, correct?

10 A Correct.

11 Q And after the NLRB issued that contract, did you continue
12 to abide by that contract?

13 A Sorry, issued that decision?

14 Q Yeah, after the NLRB issued he decision over that
15 contract, did the Company continue to abide by the contract?

16 HEARING OFFICER PALENCIA: Are you talking about the
17 contract with the Teamsters from 1988?

18 MR. STERN: Yes.

19 HEARING OFFICER PALENCIA: Referring to -- and your
20 question is?

21 Q BY MR. STERN: Did the Company continue to give effect to
22 that contract after the NLRB issued its ruling?

23 A No, we did not.

24 Q And you were ordered by the NLRB to repay all of the dues
25 that were collected under that contract, correct?

1 A I don't recall.

2 Q Do you recall if the Company had to repay dues to all of
3 the employees after the Board issued its decision?

4 A No, I don't.

5 Q Now, you offered an estimate -- I think it was an
6 estimate, some fifty percent of current maintenance employees
7 were hired from production positions; is that correct?

8 A That's correct.

9 Q And is that an estimate or is that an exact number?

10 A It is rounded. It was in the high forties.

11 Q Okay, and did you look at some records to obtain this
12 information to allow you to testify to that number today?

13 A I did.

14 Q Did you bring those records with you today?

15 A No, I did not.

16 Q And you reviewed those records to prepare for your
17 testimony today, correct?

18 A Yes, I did.

19 Q Did you round that number up or down?

20 A It was in the high forties --

21 Q I didn't ask you that. I just wanted to know did you
22 round it up or down?

23 A I would have rounded up, because it was closer to fifty
24 percent.

25 Q I didn't ask you why. You rounded up the number, right?

1 A I did.

2 Q Thank you.

3 [Long pause.]

4 Q All right, now, if you would take a look at the handbook
5 which is in evidence as Employer's Exhibit No. 9.

6 A Okay.

7 Q Now, when job assignments are made to production
8 employees, seniority is not considered, correct, if you know?

9 A Yes, it is.

10 Q Okay. Is that pursuant to a rule in your handbook; do you
11 know?

12 HEARING OFFICER PALENCIA: Do you need to look at your
13 handbook?

14 THE WITNESS: Yes, I do. Is that okay?

15 MR. STERN: Well, I would prefer to exhaust her current
16 recollection before we look at the handbook, if that is okay.

17 Q BY MR. STERN: As you sit here now, are you aware of
18 something in the handbook that says seniority is taken into
19 account when job assignments are made to production employees?

20 A Yes, I do.

21 Q Okay. Now, you have a formal job postings bidding system;
22 is that correct?

23 A We do.

24 Q And that system does not apply to maintenance employees;
25 is that correct?

1 A It does not.

2 Q But it does apply to all of the production employees,
3 hourly production employees, correct?

4 A Yes.

5 Q And that fact -- and now you can look at the handbook,
6 that fact is confirmed for us on Page 23, where it says, and I
7 quote, "The following job bid procedure applies to all front-
8 line positions, except maintenance. Do you see that? Page 23
9 about the middle of the page, the sentence all by itself?

10 A I do see it.

11 Q Okay, is that an accurate --

12 HEARING OFFICER PALENCIA: What paragraph are you looking
13 at?

14 MR. STERN: I am looking at -- one, two, three, four. It
15 is a one-sentence paragraph in the middle of the page. It
16 starts, "The following job bid procedure."

17 Q BY MR. STERN: Now, this rule is the actual rule in the
18 Company, correct? It is not just something you write in your
19 handbook. That is the actual rule you follow, right?

20 A We follow the job-bidding procedures underneath that one
21 sentence for hourly employees.

22 Q That is for all hourly employees except for Maintenance,
23 correct?

24 A Correct.

25 Q Okay. And if you looked at Page 6 of the handbook under

1 the heading Departmental Seniority, it says and I quote, "In
2 some departments, Maintenance, for example, departmental
3 seniority is considered a factor in job assignments. Is that a
4 true statement?

5 A That is a true statement.

6 Q Okay, and then if you look in the line above the heading,
7 Departmental Seniority, it says, "Seniority is not considered a
8 primary factor for purposes of creating work schedules or
9 making line/role specific assignments, outside the job-bidding
10 process." Is that an accurate statement of the procedure your
11 company follows?

12 A For all employees, yes.

13 Q All employees except for maintenance, right?

14 A No.

15 Q Well, it says "seniority is not considered a primary
16 factor for purposes of creating work schedules or making
17 line/role specific assignments, outside the job-bidding
18 process," and then the next line down, it says, "In some
19 departments, Maintenance for example, departmental seniority is
20 considered a factor." So, aren't the rules different for
21 maintenance employees and production employees in this area?

22 A Not when we are talking about creating work schedules.

23 Q What about making line/role specific assignments?

24 A No, that is not different for either one of those
25 categories.

1 Q So, is this handbook incorrect?

2 A This is referring to the job bidding process. It is not
3 referring to specific schedules or line assignments.

4 Q Well, the sentence above Departmental Seniority, it says,
5 "Seniority is not considered a primary factor for purposes of
6 creating work schedules or making line/role specific
7 assignments outside the job-bidding process." So, outside the
8 job-bidding process, you have different rules with respect to
9 seniority with respect to production and maintenance, right?

10 A Outside the job-bidding process, we do not consider
11 seniority for the purpose of assigning people to lines, or for
12 the purpose of scheduling.

13 Q That is for production employees, correct?

14 A It is also for maintenance employees.

15 Q And so you don't consider seniority when you are figuring
16 out job assignments for maintenance?

17 A No.

18 Q So, the handbook is wrong, because it says you do?

19 A The way I interpret that is --

20 Q Madam, I am not asking for your interpretation. Never
21 once today have I asked for you to interpret anything.

22 I am asking you, does this handbook correctly state the
23 rules of your company with respect to the matters covered on
24 Page 6?

25 A Ask me the question again, please.

1 Q Well, ma'am, you previously testified in response to
2 questions from your counsel, that this handbook accurately
3 depicted the policies of your company. Was that a true
4 statement when you made that?

5 A It was a true statement, absolutely.

6 Q Okay, so this book accurately depicts all -- you don't see
7 any policy in this book that is incorrect, do you? I am just
8 trying to find out, does the handbook accurately spell out the
9 policies of your company, yes or no?

10 A Yes, it does.

11 Q Okay, thank you.

12 Now, if you could take a look at Company 11.

13 Before we get to that, the maintenance position, is there
14 any specialized type of license that any maintenance employee
15 is required to have, any hourly maintenance employee.

16 You know what, I withdraw that question. If there is a
17 special license required of any hourly maintenance employee, it
18 would be in the job description, right?

19 A (No response.).

20 Q Why don't you take a look at Company Exhibit No. 8.

21 A The Pasteurization?

22 Q This is the one -- Company Exhibit No. 8 is the one -- you
23 described in your testimony, the --

24 HEARING OFFICER PALENCIA: I'm sorry, what are you
25 referring to?

1 MR. STERN: I am referring to Company Exhibit No. 1 --

2 HEARING OFFICER PALENCIA: 1, I'm sorry.

3 MR. STERN: As referring to a Maintenance I position --

4 HEARING OFFICER PALENCIA: Let's make sure the witness has
5 it.

6 THE WITNESS: I thought I heard you say Exhibit 1, I'm
7 sorry.

8 MR. STERN: Company Exhibit No. 8.

9 HEARING OFFICER PALENCIA: Company Exhibit 8.

10 What page?

11 MR. STERN: The whole thing.

12 Q BY MR. STERN: Now, in your testimony, I believe you said
13 that this accurately depicts the job of the Maintenance I line
14 Mechanic; is that right?

15 A I did.

16 Q And there is no special license required anywhere in this
17 document; is that correct?

18 A It doesn't say that they need one, no, it does not.

19 Q And therefore, there is no special license required for
20 this position, correct?

21 A It also says --

22 Q I am not asking you about what it also says. I am just
23 saying -- first, I asked you, is there any license requirement
24 in this document itself?

25 MR. BOBBER: Madame Hearing Officer, I object. Would you

1 please allow the witness to finish? It is a fact-gathering
2 hearing, after all.

3 HEARING OFFICER PALENCIA: Yes.

4 MR. STERN: Responses have to be responsive to the
5 question asked. Witnesses don't get to say just whatever they
6 want.

7 HEARING OFFICER PALENCIA: But because it is a fact-
8 finding, it is -- if your response is yes or no, that's fine,
9 but if your response is not a yes or not, then you need to give
10 an explanation for --

11 MR. STERN: I don't have any problem with that. I just
12 don't want an explanation that is explaining something I didn't
13 ask about.

14 Q BY MR. STERN: My only question is -- well, is there any
15 hourly Maintenance Department position that requires any
16 special license, as far as you know?

17 A Is a certification a license?

18 Q Is there a certification required in Maintenance?

19 A Yes, for people who are RITA certified.

20 Q What is RITA?

21 A I don't know what the acronym is, but for refrigeration
22 technicians -- I don't know what the acronym stands for, but --

23 Q And is a RITA certification required for maintenance
24 employees who work on refrigeration systems?

25 A Yes.

1 Q Is that RITA certification required for any production
2 employee, hourly?

3 A No.

4 Q Okay, and then, if you take a look at Employer's Exhibit
5 No. 7, which is the Mix Maker job description, I believe, Ice
6 Cream Maker Ii, Mix Maker -- do you have that in front of you?

7 A Yes, I do.

8 Q The first bullet point under number 1, in bold capital
9 letters, it says, and I quote, "Must obtain pasteurization
10 license within six months," and that is a real requirement of
11 that job; is that right?

12 A Yes.

13 Q Okay, does any maintenance hourly position require a
14 pasteurization license?

15 A No.

16 Q Are there any other licenses or certifications that your
17 production employees are required to have, other than the
18 pasteurization?

19 A Nothing comes to mind, no.

20 Q And you went and you actually looked at the records to get
21 an estimate as to the number of maintenance employees who were
22 formerly production employees, right?

23 A I did.

24 Q Did you do the same to find out how many maintenance
25 employees became production employees?

1 A I did not.

2 Q And is that because you know that there are virtually no
3 production employees who are former maintenance employees at
4 the Company?

5 A No, that is not why.

6 Q Okay, do you know of any individual?

7 A Yes, I do.

8 Q How many?

9 A One that comes to mind.

10 Q One out of the current 113 -- oh, strike that. He is now
11 in production; I take that back. Bad question.

12 MR. STERN: I don't have anything further.

13 Thank you, ma'am.

14 MR. BOBBER: Nothing further, ma'am.

15 [Long pause.]

16 **EXAMINATION BY THE COURT**

17 HEARING OFFICER PALENCIA: Okay, Employer's Exhibit No. 7,
18 if you can look at that, please?

19 THE WITNESS: Okay.

20 HEARING OFFICER PALENCIA: It says here, "Must obtain a
21 pasteurization license." What is a pasteurization license?

22 THE WITNESS: It is a license that is required by the
23 State of California for somebody who is pasteurizes our raw
24 materials.

25 HEARING OFFICER PALENCIA: And are you familiar with the

1 process in obtaining the license and what is required?

2 THE WITNESS: Vaguely. I am vaguely familiar with it.

3 HEARING OFFICER PALENCIA: And how are you familiar with
4 that?

5 THE WITNESS: In having the Mix Makers talk about studying
6 for the license, that they might be given the opportunity to
7 take the time to study so they can pass it in a six-month
8 period.

9 HEARING OFFICER PALENCIA: So, your employees are asking
10 for time to study to take this test?

11 THE WITNESS: Yes.

12 HEARING OFFICER PALENCIA: If you can look at Employer's
13 Exhibit No. 9.

14 THE WITNESS: I don't have it.

15 HEARING OFFICER PALENCIA: You don't have the handbook?

16 THE COURT REPORTER: The handbook?

17 HEARING OFFICER PALENCIA: Please.

18 THE WITNESS: Thank you.

19 HEARING OFFICER PALENCIA: I want to go through some of
20 these provisions in your handbook, okay?

21 THE WITNESS: Okay.

22 HEARING OFFICER PALENCIA: Okay, 5 refers to evaluation
23 periods, initial evaluation period.

24 THE WITNESS: Yes.

25 HEARING OFFICER PALENCIA: Do all employees -- aside from

1 this initial evaluation period, are hourly employees evaluated
2 on an annual basis, to your knowledge?

3 THE WITNESS: Yes, they are.

4 HEARING OFFICER PALENCIA: And who are they evaluated by?

5 THE WITNESS: Their supervisor.

6 HEARING OFFICER PALENCIA: Their immediate supervisor?

7 THE WITNESS: Yes.

8 [Long pause.]

9 HEARING OFFICER PALENCIA: I want to go to Page 6,
10 Department Seniority.

11 Mr. Stern asked you some questions with regard to
12 departmental seniority. Is it your testimony that this policy,
13 as written, is not being applied?

14 THE WITNESS: Are you talking about Departmental
15 Seniority, the paragraph underneath Departmental Seniority?

16 HEARING OFFICER PALENCIA: Yes. Where it says, "In some
17 departments, Maintenance, for example, departmental seniority
18 is considered a factor in job assignments. This is done to
19 ensure that skill sets are appropriately distributed across" --

20 THE WITNESS: That is being applied.

21 HEARING OFFICER PALENCIA: Can you explain to me an
22 example of how that is applied; give me an example.

23 THE WITNESS: So, in a case where a maintenance person
24 would be looking to move into another shift, we would look at
25 department seniority before they move.

1 HEARING OFFICER PALENCIA: Into another shift?

2 THE WITNESS: Into another shift. So, if a maintenance
3 person worked second shift, and there was an opening on first
4 shift, they would be looking at the department seniority of the
5 maintenance personnel to determine who would move to first
6 shift.

7 HEARING OFFICER PALENCIA: Are certain shifts more
8 desirable than others?

9 THE WITNESS: Typically first shift.

10 HEARING OFFICER PALENCIA: That is with respect to your
11 maintenance people. What about your production people,
12 different shifts for production people?

13 THE WITNESS: There is first, second, and third shift.

14 HEARING OFFICER PALENCIA: And would it be correct to say
15 that certain shifts are more desirable for production
16 personnel, as well?

17 THE WITNESS: Yes, it is.

18 HEARING OFFICER PALENCIA: And how does that work if two
19 employees with different start dates are requesting to be
20 changed to the same shift?

21 THE WITNESS: You would look at the seniority within the
22 department, the Business Unit for those employees, as well, and
23 then you make a determination based on the higher level -- you
24 have to look at Ice Cream Maker II to Ice Cream Maker II and
25 Ice Cream Maker I to Ice Cream Maker I and then you look at the

1 most senior person to move them to the desired shift.

2 HEARING OFFICER PALENCIA: Page 6 refers to bulletin
3 boards, and how many bulletin boards do you have at your
4 facility?

5 THE WITNESS: Oh, my goodness. We just redid them at the
6 beginning of the year. I can't remember.

7 HEARING OFFICER PALENCIA: More than two?

8 THE WITNESS: A lot more than two.

9 HEARING OFFICER PALENCIA: Are there specific bulletin
10 boards only for -- for maintenance employees? They are not for
11 production employees?

12 THE WITNESS: If it is a schedule, for example, each
13 department goes to a specific board to look at their work
14 schedule.

15 HEARING OFFICER PALENCIA: Okay, so schedules are posted
16 on bulletin boards and each department has their own bulletin
17 board?

18 THE WITNESS: Makes it easier for people to go find their
19 schedule, yes.

20 HEARING OFFICER PALENCIA: Now, if you have got a -- if
21 you have got a -- if you have got a maintenance employee, would
22 a maintenance employee -- would their schedule ever be posted
23 on the same bulletin board as that of a production employee?

24 THE WITNESS: I don't know.

25 HEARING OFFICER PALENCIA: And there is a parking lot at

1 your facility, right?

2 THE WITNESS: Yes, there is.

3 HEARING OFFICER PALENCIA: Is there one parking lot or is
4 there two?

5 THE WITNESS: There are two parking lots.

6 HEARING OFFICER PALENCIA: And in any of those parking
7 lots, do you have -- is there a parking lot exclusively for
8 production employees?

9 THE WITNESS: No.

10 HEARING OFFICER PALENCIA: At any of these parking lots,
11 do you have maintenance employees and production employees
12 parking in that parking lot?

13 THE WITNESS: Yes, we do.

14 HEARING OFFICER PALENCIA: Number 8 refers to benefit
15 programs. It says the Company offers a competitive package of
16 benefit programs. What kind of benefit programs?

17 THE WITNESS: The benefit programs would be the medical,
18 the dental, the vision --

19 HEARING OFFICER PALENCIA: That's okay.

20 Page 11 refers to computer internet access, correct?

21 THE WITNESS: Yes.

22 HEARING OFFICER PALENCIA: And there was testimony that
23 maintenance employees have access to computers; is that
24 correct?

25 THE WITNESS: That's correct.

1 HEARING OFFICER PALENCIA: Do any production employees
2 have any access to computers?

3 THE WITNESS: Yes.

4 HEARING OFFICER PALENCIA: Which computers?

5 THE WITNESS: Computers on the production floor that I
6 know of for sure.

7 HEARING OFFICER PALENCIA: For what purpose?

8 THE WITNESS: For the purpose of entering information
9 related to quality in the process of doing their job.

10 HEARING OFFICER PALENCIA: Give me an example.

11 THE WITNESS: I am not sure that I can.

12 HEARING OFFICER PALENCIA: Do you know of -- so, have you
13 seen -- have you observed employees using those computers?

14 THE WITNESS: Yes, I have.

15 HEARING OFFICER PALENCIA: And the computers you are
16 referring to, are those also -- are any of those computers used
17 by production employees?

18 THE WITNESS: Yes, they are.

19 HEARING OFFICER PALENCIA: For what purpose?

20 THE WITNESS: They take quality samples of the product as
21 they are doing their daily activities, so they enter that
22 information into the computer.

23 [Long pause.]

24 HEARING OFFICER PALENCIA: Okay, Page 13 describes a
25 Perfect Attendance Award.

1 THE WITNESS: Okay.

2 HEARING OFFICER PALENCIA: And is that still in effect?
3 Is that being implemented?

4 THE WITNESS: That is still in effect.

5 HEARING OFFICER PALENCIA: And it applies to all of your
6 hourly employees; is that correct?

7 THE WITNESS: That is correct.

8 HEARING OFFICER PALENCIA: Page 19, please.

9 Paychecks, are they distributed on different dates for
10 different classifications?

11 THE WITNESS: No.

12 HEARING OFFICER PALENCIA: Is there a pay day?

13 THE WITNESS: Payday is every other Friday.

14 HEARING OFFICER PALENCIA: Every other Friday, paychecks
15 are distributed at the facility; is that correct, or are they
16 mailed?

17 THE WITNESS: They are mailed.

18 HEARING OFFICER PALENCIA: Okay, so it is a biweekly
19 paycheck?

20 THE WITNESS: Yes.

21 HEARING OFFICER PALENCIA: And everyone gets a biweekly
22 paycheck?

23 THE WITNESS: Everyone.

24 HEARING OFFICER PALENCIA: Okay, and then, Page 20
25 describes funeral pay and jury duty pay.

1 THE WITNESS: Yes.

2 HEARING OFFICER PALENCIA: Okay, funeral pay -- and that
3 is enforced?

4 THE WITNESS: Yes, we do pay funeral pay.

5 HEARING OFFICER PALENCIA: Is that for all hourly
6 employees?

7 THE WITNESS: For everyone; hourly, salaried --

8 HEARING OFFICER PALENCIA: Same thing with jury duty pay?

9 THE WITNESS: Yes.

10 I do need to tell you something about both of those.

11 HEARING OFFICER PALENCIA: Okay.

12 THE WITNESS: If I can.

13 HEARING OFFICER PALENCIA: Yes.

14 THE WITNESS: Okay, those two will be revised effective
15 January of this year.

16 HEARING OFFICER PALENCIA: When you say revised, were they
17 in existence prior to January of this year?

18 THE WITNESS: Yes.

19 HEARING OFFICER PALENCIA: Do you know what revisions were
20 made to the funeral pay?

21 THE WITNESS: Funeral pay is three days.

22 HEARING OFFICER PALENCIA: It was three days prior to
23 January of this year?

24 THE WITNESS: It was five days prior to January of this
25 year. January, it was three days.

1 HEARING OFFICER PALENCIA: Okay, as of January of this
2 year, it has been changed to three days.

3 THE WITNESS: Correct.

4 HEARING OFFICER PALENCIA: What about jury duty?

5 THE WITNESS: Jury duty was changed from having no minimum
6 time; it would cover the duration of the jury, to a two-week
7 period.

8 HEARING OFFICER PALENCIA: And Page 21?

9 THE WITNESS: Okay.

10 HEARING OFFICER PALENCIA: Sick pay?

11 THE WITNESS: Sick pay is something we still do.

12 HEARING OFFICER PALENCIA: For all employees?

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: And there has been no revisions
15 to this policy?

16 THE WITNESS: We have not, no.

17 HEARING OFFICER PALENCIA: Holiday premium pay on Page 21
18 is also applicable to all employees?

19 THE WITNESS: It is applicable, yes.

20 HEARING OFFICER PALENCIA: And is it -- I want to talk a
21 little bit about overtime, and that is on Page 22.

22 THE WITNESS: Okay.

23 HEARING OFFICER PALENCIA: Your production employees, do
24 they work overtime?

25 THE WITNESS: Yes, they do.

1 HEARING OFFICER PALENCIA: And on a regular basis, they
2 work overtime?

3 THE WITNESS: Yes.

4 HEARING OFFICER PALENCIA: What about your maintenance
5 employees?

6 THE WITNESS: They work overtime, as well.

7 HEARING OFFICER PALENCIA: On a regular basis?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: Approximately, does one group
10 of employees, say the production employees -- does one group of
11 employees generally make more overtime than others, or more
12 overtime?

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: And what group would that be?

15 THE WITNESS: Probably maintenance.

16 HEARING OFFICER PALENCIA: And you are basing this -- how
17 are you basing this -- I'm sorry, and your knowledge that this
18 comes from?

19 THE WITNESS: Recently, I saw an overtime report. I don't
20 remember the specifics of it, but I remember that Maintenance
21 had more overtime.

22 HEARING OFFICER PALENCIA: And overtime reports are
23 something you look at as a Human Resources --

24 THE WITNESS: Yes.

25 HEARING OFFICER PALENCIA: -- Manager, right?

1 THE WITNESS: Yes.

2 HEARING OFFICER PALENCIA: Approximately how much overtime
3 do the production employees on a given two weeks earn?

4 THE WITNESS: Anywhere from -- I think it really varies
5 from department to department. Some people may work very
6 little overtime, a couple of hours, where other people may work
7 ten, twelve hours of overtime in a week.

8 HEARING OFFICER PALENCIA: And it varies from department?

9 THE WITNESS: It varies from department, because sometimes
10 people are on leaves of absence and somebody has got to cover
11 the work or people are absent, and somebody has got to cover to
12 do the work.

13 HEARING OFFICER PALENCIA: And do people take vacations at
14 different times?

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: What about your Maintenance
17 employees, from your understanding and what you have seen the
18 records of, about how much overtime do they earn in a two-week
19 period?

20 THE WITNESS: It depends from different data to different
21 data, because there may be some areas that have more people
22 absent or more people on leave of absence, and people need to
23 cover.

24 [Long pause.]

25 HEARING OFFICER PALENCIA: And you have got shift premium

1 pay. Does that apply to all hourly employees?

2 THE WITNESS: Yes, it does.

3 HEARING OFFICER PALENCIA: The same as report-in premium
4 pay?

5 THE WITNESS: Yes.

6 HEARING OFFICER PALENCIA: The same as with performance
7 programs?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: I want to talk about the job
10 posting and bidding system, described on Page 23.

11 Page 23 describes the procedure that applies -- to
12 positions like maintenance, okay?

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: And with regards to
15 Maintenance, are the jobs posted?

16 THE WITNESS: Yes, they are.

17 HEARING OFFICER PALENCIA: Plant-wide?

18 THE WITNESS: Yes, they are.

19 HEARING OFFICER PALENCIA: And is there any bidding that
20 happens in Maintenance?

21 THE WITNESS: The only time that I can think of that
22 bidding happens is the Maintenance Department, is if they are
23 going from a Level 7 to Level 8

24 HEARING OFFICER PALENCIA: Okay.

25 THE WITNESS: So, there --

1 HEARING OFFICER PALENCIA: Because there is a salary
2 increase?

3 THE WITNESS: It is a higher level position -- so Exhibit
4 No. 10 shows, Maintenance Craft Worker, Level L-7. If there is
5 a Maintenance Group position, that would be posted, and then
6 people from within the Level 5, 6, or 7 would be eligible to
7 bid.

8 HEARING OFFICER PALENCIA: And to your knowledge, is the
9 start date a factor, and who gets picked from one -- from one
10 level to another?

11 THE WITNESS: Yes.

12 HEARING OFFICER PALENCIA: Okay. Is there mandatory
13 overtime?

14 THE WITNESS: Is mandatory scheduled?

15 HEARING OFFICER PALENCIA: Do you have mandatory overtime,
16 where people are forced to work overtime? You don't give them
17 a choice? Is there mandatory overtime?

18 THE WITNESS: We schedule people to work on overtime, yes.

19 HEARING OFFICER PALENCIA: Okay, and are any of your
20 Production employees scheduled to work overtime?

21 THE WITNESS: Yes.

22 HEARING OFFICER PALENCIA: What about your maintenance
23 employees?

24 THE WITNESS: Yes.

25 [Long pause.]

1 HEARING OFFICER PALENCIA: Okay, Employer's Exhibit No. 11
2 is the Collective Bargaining Agreement.

3 THE WITNESS: Okay.

4 HEARING OFFICER PALENCIA: What happened to that union?
5 To your knowledge, what happened to that union?

6 THE WITNESS: To Teamsters Local 87?

7 HEARING OFFICER PALENCIA: Yes.

8 THE WITNESS: It was determined that they would no longer
9 be recognized.

10 HEARING OFFICER PALENCIA: And when you say it was
11 determined, who determined that?

12 THE WITNESS: I think it was the NLRB. The NLRB determine
13 that.

14 HEARING OFFICER PALENCIA: And how did you learn of that?

15 THE WITNESS: Through meetings and through reading
16 documents.

17 [Long pause.]

18 HEARING OFFICER PALENCIA: Employer's Exhibit No. 10; can
19 the witness be shown Employer's Exhibit No. 10, please?

20 THE COURT REPORTER: Yes.

21 HEARING OFFICER PALENCIA: Okay, this is an accurate
22 description of the wages, correct?

23 THE WITNESS: Correct.

24 HEARING OFFICER PALENCIA: And I want to go to the bottom
25 of that under Maintenance Group Leader, and this -- we have

1 talked about a Maintenance Group Leader. Is this like a lead
2 person --

3 THE WITNESS: It is a lead person, yes.

4 HEARING OFFICER PALENCIA: A lead person that is in the
5 Utility group or the shop employees, line Mechanics; any of
6 those?

7 THE WITNESS: Line employees, different parts of the
8 [indiscernible].

9 HEARING OFFICER PALENCIA: Okay, so the Maintenance Group
10 Leader is a Lead Line Mechanic?

11 THE WITNESS: Yes.

12 HEARING OFFICER PALENCIA: Aside from that, to your
13 knowledge, does it refer to any other type of lead, say a
14 Utility Lead Person?

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: It also refers to that?

17 THE WITNESS: There is also a lead in Utilities.

18 HEARING OFFICER PALENCIA: In Shop?

19 THE WITNESS: There is not a lead in Shop.

20 HEARING OFFICER PALENCIA: So, is it correct to say that
21 the Maintenance Group Leader, refers to a lead employee, and
22 that could either be a Utility lead employee; is that correct?

23 THE WITNESS: Correct.

24 HEARING OFFICER PALENCIA: Or a Line Lead Mechanic?

25 THE WITNESS: Correct.

1 HEARING OFFICER PALENCIA: Now, Maintenance Control Tech.

2 THE WITNESS: There is also someone in the
3 [indiscernible], I'm sorry.

4 HEARING OFFICER PALENCIA: Oh, okay, so Maintenance Group
5 Leader could also include a person in the --

6 THE WITNESS: If you are talking about someone in the
7 ASRS, then --

8 HEARING OFFICER PALENCIA: Tell me what ASRS is.

9 THE WITNESS: It is part of the plant where we freeze --
10 where we store our frozen product.

11 HEARING OFFICER PALENCIA: And that person who works in
12 that part of the plant of the frozen product, is that -- to
13 your knowledge, is that -- that is one -- is that included in
14 the number of employees -- of Production employees in Board
15 Exhibit No. 2?

16 THE WITNESS: No, it is included in the 113 Maintenance
17 employees.

18 HEARING OFFICER PALENCIA: Oh, yeah. Okay.
19 Your Maintenance Control Tech --

20 THE WITNESS: Yes.

21 HEARING OFFICER PALENCIA: Who is -- is this a lead
22 position, as well?

23 THE WITNESS: No, it is a maintenance employee who is more
24 -- has a different type of knowledge, like programmable logic.

25 HEARING OFFICER PALENCIA: Is this person part of the

1 utility group, or not?

2 THE WITNESS: They report to -- to an engineer person.

3 HEARING OFFICER PALENCIA: What do you mean by
4 programmable knowledge?

5 THE WITNESS: Programmable logic.

6 HEARING OFFICER PALENCIA: Okay, sorry. What do you mean
7 by that?

8 THE WITNESS: It is a computerized process where they have
9 specific tools where they can write programs, they can read
10 programs, and they can troubleshoot.

11 HEARING OFFICER PALENCIA: And to your knowledge, is this
12 classification included in the Maintenance employees, as being
13 petitioned for?

14 THE WITNESS: Yes, part of the 113, yes.

15 HEARING OFFICER PALENCIA: Now programmable logic, does
16 that require a license?

17 THE WITNESS: I don't think so. It requires different
18 knowledge of computers and programs, but I don't know that
19 there is a license associated with that.

20 HEARING OFFICER PALENCIA: And to your knowledge, how many
21 Maintenance Control Techs do you have?

22 THE WITNESS: Maintenance Control Techs, I keep seeing
23 three.

24 HEARING OFFICER PALENCIA: About three?

25 THE WITNESS: Uh-huh.

1 HEARING OFFICER PALENCIA: And where do they work? They
2 work only with computers, correct?

3 THE WITNESS: I am not sure that is all they do, but that
4 is the major function.

5 [Long pause.]

6 HEARING OFFICER PALENCIA: Let's go to Employer's Exhibit
7 No. 5.

8 HEARING OFFICER PALENCIA: Off the record. Off the
9 record.

10 (Off the record.)

11 HEARING OFFICER PALENCIA: Back on the record.

12 Just for clarification purposes, look at Employer's
13 Exhibit No. 6, and if you will look at 2.2.4.

14 THE WITNESS: Okay.

15 HEARING OFFICER PALENCIA: What is HACCP? What does that
16 refer to?

17 THE WITNESS: I don't remember what the acronym stands
18 for.

19 HEARING OFFICER PALENCIA: What does that program mean?

20 THE WITNESS: It is a program -- it is a food safety check
21 program that is required, that we look at the critical control
22 points to make sure that the product is -- a food safety
23 program.

24 HEARING OFFICER PALENCIA: Can we just get a stipulation
25 that anytime we see the reference to NCE, that that is the --

1 that that is referred to Nestlé --

2 MR. BOBBER: Continuous Excellence.

3 HEARING OFFICER PALENCIA: -- Continuous Excellence?

4 MR. BOBBER: Yes.

5 MR. STERN: Yes.

6 HEARING OFFICER PALENCIA: Okay, the stipulation is
7 received into the record.

8 Okay, if you look at the second page of Exhibit 6, please?

9 Okay, look at under Flavoring, 2.4.3.4.

10 THE WITNESS: Okay.

11 HEARING OFFICER PALENCIA: FIFO; what does that refer to?

12 THE WITNESS: First-in/first-out.

13 HEARING OFFICER PALENCIA: Okay, Employer's Exhibit No. 7
14 please.

15 THE WITNESS: Okay.

16 HEARING OFFICER PALENCIA: The bottom of that page. BOD.
17 What is BOD?

18 THE WITNESS: I don't recall what it stands for.

19 HEARING OFFICER PALENCIA: But do you know what type of --
20 what it is talking about or what this is referring to, if you
21 know?

22 THE WITNESS: I don't.

23 HEARING OFFICER PALENCIA: Okay, and there is an SSOP?

24 THE WITNESS: SSOP is Standard Statement of Operating
25 Process.

1 HEARING OFFICER PALENCIA: Mr. Stern?

2 MR. STERN: No questions -- oh, wait, I do have one
3 question.

4 **RECROSS EXAMINATION**

5 Q BY MR. STERN: You testified before that you were aware of
6 one maintenance employee who went to a production position;
7 correct?

8 A I did, yes.

9 Q Do you recall that employee's name?

10 A Yes, I do.

11 Q What is it?

12 A Mark Bishop.

13 Q And did Mark Bishop, before he was in Maintenance, start
14 out in Production?

15 A I don't remember where he started.

16 Q Do you remember why he left Maintenance?

17 A No, I don't.

18 MR. STERN: Thank you. Nothing further.

19 MR. BOBBER: Nothing.

20 HEARING OFFICER PALENCIA: Just one more question because
21 I am not sure the record is clear.

22 **FURTHER EXAMINATION BY THE COURT**

23 HEARING OFFICER PALENCIA: Health benefits, I am not sure
24 if this has been asked and answered, but do the same health
25 benefits apply to the production employees and maintenance

1 employees?

2 THE WITNESS: Yes.

3 HEARING OFFICER PALENCIA: And that would be health
4 insurance?

5 THE WITNESS: Yes.

6 HEARING OFFICER PALENCIA: There was a dental plan as
7 well?

8 THE WITNESS: Yes.

9 HEARING OFFICER PALENCIA: Oh, during cross examination by
10 Mr. Stern, you were asked with regards to maintenance employees
11 being hired to work -- I'm sorry, production employees being
12 hired to work as maintenance employees.

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: And you gave a percentage.

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: And what records were you
17 looking at?

18 THE WITNESS: I was looking at the employee -- the list of
19 maintenance employees and the employees' files.

20 HEARING OFFICER PALENCIA: And was any of this hiring
21 paperwork or promotion paperwork?

22 THE WITNESS: It was paperwork showing that maintenance
23 employees had bid for the position in maintenance, and they
24 were successful in obtaining that position.

25 HEARING OFFICER PALENCIA: And your testimony was that you

1 rounded up?

2 THE WITNESS: It was high forties, and I rounded up to
3 fifty percent, yes.

4 [Long pause.]

5 HEARING OFFICER PALENCIA: Mr. Bobber?

6 MR. BOBBER: Nothing further.

7 HEARING OFFICER PALENCIA: Mr. Stern?

8 MR. STERN: Nothing.

9 HEARING OFFICER PALENCIA: Witness is excused.

10 (Witness excused.)

11 HEARING OFFICER PALENCIA: Call your next witness?

12 MR. BOBBER: Yes, Roy Beyeler.

13 MR. STERN: I'm sorry to interrupt, but can I take a quick
14 restroom break?

15 HEARING OFFICER PALENCIA: Sure.

16 Off the record.

17 (Off the record.)

18 HEARING OFFICER PALENCIA: Back on the record.

19 Please raise your right hand.

20 Whereupon,

21 **ROY BEYELER,**

22 having been sworn, was called as a witness herein, and was
23 examined and testified, as follows:

24 HEARING OFFICER PALENCIA: State your name for the record.

25 THE WITNESS: Roy Beyeler.

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5900 Nieman Road, Suite 200
Shawnee, Kansas 66203
Phone: (913) 422-5198

1 HEARING OFFICER PALENCIA: Please spell your name.

2 THE WITNESS: R-o-y, B-e-y-e-l-e-r.

3 HEARING OFFICER PALENCIA: Thank you.

4 Mr. Bobber, please proceed.

5 **DIRECT EXAMINATION**

6 Q BY MR. BOBBER: Mr. Beyeler, how are you currently
7 employed?

8 A I am a Maintenance Manager with Nestlé-Dreyer's Ice Cream
9 Company.

10 Q And how long have you had that role of Maintenance
11 Manager?

12 A For about the last three weeks.

13 Q When did you first become employed by Nestlé-Dreyer's?

14 A In 1995.

15 Q I would like to ask you to take us through a chronology of
16 your jobs at the plant, so starting in 1995, what was the first
17 position that you held?

18 A Starting in 1995, I was Maintenance Mechanic. I did that
19 for around three years or so.

20 Q Was that the hourly position?

21 A Correct.

22 Q Okay.

23 A Then I went into the Production Supervisor role for a
24 year. Then I went in Maintenance Supervisor role --

25 Q Okay, let me stop you.

1 A Sure.

2 Q Let me ask you before I lose track of these.

3 When you were a Maintenance Mechanic, did you have a
4 particular Business Unit or area assignment of any kind?

5 A Yeah, when I was a Maintenance Mechanic, I started out in
6 what is now East Snacks. I was there for a while and then went
7 into the West Snacks Business Unit, and then moved into a
8 Maintenance Group Leader role, then into Production Supervisor
9 role.

10 Q Okay, and then in the Production Supervisor role, did you
11 have a particular area of assignment?

12 A Yes, at that time, the units were divided differently. It
13 was over specialties, which is -- in today's world, it is three
14 eight lines in West Snacks and seven lines in E-Snacks.

15 HEARING OFFICER PALENCIA: Okay, when you are say "E," you
16 are referring to East, correct?

17 THE WITNESS: East Snacks, yes.

18 Q BY MR. BOBBER: And for how long did you hold that
19 Production Supervisor job?

20 A For approximately one year.

21 Q And then what was your next position?

22 A And then the Maintenance Supervisor.

23 Q And did you have a particular area of assignment in that
24 job?

25 A I had the whole production floor.

1 Q Okay.

2 A At that time, we did not have the DAP production area;
3 that was before the expansion, so it was essentially East and
4 West Snacks, Machine Shop, Mix Making, Palletizing --

5 Q But in any event, as Maintenance Supervisor, you had
6 responsibility for the Maintenance Mechanics on the production
7 floor?

8 A Yes.

9 Q East and West?

10 A Yes.

11 Q And how long did you hold that Maintenance Supervisor job?

12 A It was approximately three years.

13 Q And then what happened?

14 A Then I left the Company in 2003, and returned to the
15 Company in 2005.

16 Q In that interim, were you working for another employer?

17 A Yes.

18 Q Who was that?

19 A Target Distribution.

20 Q When you returned to Nestlé-Dreyer's in 2005, into what
21 role did you return?

22 A Maintenance Supervisor.

23 Q With that same area of responsibility that you had before
24 leaving?

25 A At the beginning, there was another Maintenance Supervisor

1 there. When I came back, two weeks after I returned, he left
2 the Company. So, after that two weeks, yes, in the same
3 capacity.

4 Q And for how long did you hold the Maintenance Supervisor
5 job once you came back in 2005?

6 A About a year and a half, two years.

7 Q And what was the next role then?

8 A Maintenance Manager.

9 Q So, how long did you -- strike that.

10 When did you become Maintenance Manager?

11 A In 2007, beginning of 2007, I believe, or towards the end
12 of 2006, like December or something.

13 Q And you haven't remained the Maintenance Manager till now,
14 have you?

15 A No.

16 Q Okay, what happened next?

17 A In January of 2010, I moved into the Production side as a
18 Production and Business Unit Manager.

19 Q And which of the particular Business Units did you have
20 responsibility for?

21 A West Snacks.

22 [Long pause.]

23 Q And is that the job, the Production Business Unit Manager
24 job that you held from January of 2010 until three weeks ago?

25 A Correct.

1 Q Can you -- in terms of the 113 maintenance employees that
2 we are talking about in this hearing, can you give us some
3 breakdowns of where those folks are, in the various maintenance
4 roles?

5 For example, we have talked today about the Utilities
6 Maintenance employees. Approximately how many of them, do you
7 have?

8 A In Utilities, there is approximately sixteen.

9 Q Okay. And then, in the three Business Units of East
10 Snacks, West, and DAP, in total, how many Maintenance Mechanics
11 do you have assigned to those Business Units?

12 A About 56, all three combined.

13 Q And so other than those Business Unit assignments and
14 Utilities assignments, what are the other Maintenance
15 employees?

16 A So, there is West, East, DAP, Utilities; there is Process
17 Techs Mechanics, there is Palletizing Mechanics, and there is
18 also Facilities Mechanics, and then Control Specialists --
19 Control Technicians.

20 Q Approximately how many Control Technicians do you have?

21 A There are four.

22 Q And how about the Facilities Maintenance personnel, how
23 many of those?

24 A There are two full-time Maintenance - Facilities
25 Technicians.

1 Q How about the Palletizer Mechanics, how many of those?

2 A I don't know off the top of my head. I can't say for
3 sure. It is approximately sixteen.

4 Q And how about the Process Techs; approximately how many of
5 those?

6 A Let's see, twelve.

7 Q And where do they work?

8 A The Process Techs work primarily in the Pre-Manufacturing
9 area, so mix making is what they focus on. They support the
10 mix-making process, all of the controls, the HTST's, the
11 homogenizers to make the mix, the Dry Blend Room, the control
12 systems to get the mix. Once the mix is made in the Mix Room,
13 it goes to a batch tank and then to a mix tank. They control
14 all of the process to get it to a mix tank, and once it gets to
15 the mix tank, when the Ice Cream Makers on the line draw the
16 mix from the mix tank to their flavor vats on the line, that is
17 also in the realm of the Process Techs' responsibility. They
18 also support CIP.

19 Q Which is?

20 A Cleaning-in-place. It primarily takes place on third
21 shift, so that is when mix tanks are cleaned and sanitized,
22 flavor vats, the fillers on the lines, the lines are cleaned.
23 The Process Techs are pretty much responsible for that, up to
24 flavor vats and the pumps at the flavor vats and the CIP pumps.

25 Q I want to ask you a few questions, Mr. Beyeler about how

1 you structure supervision for the Maintenance employees.

2 On first shift, what type of maintenance supervision do
3 you have over the Maintenance employees?

4 A So, the Maintenance coaches are supervisors. They are
5 staggered. Their times are staggered, just because of
6 coverage, for coverage purposes. So, on first shift, I have
7 one Maintenance Supervisor that comes in at 1:00 a.m.; 1:00
8 a.m. to 11:00 a.m. He is in East Snacks, part Cones.

9 Another supervisor in Palletizing, he comes in at 2:00
10 a.m. to noon. I have another supervisor that comes in at 7:00
11 to 5:00 p.m. He is in West Snacks, Rollo lines. Another
12 Maintenance Supervisor comes in at 8:00 a.m. to 6:00 p.m.,
13 again for coverage purposes. That pretty much covers first
14 shift and into second. We also have coverage to third, as
15 well.

16 Q And there was some discussion earlier about Production
17 Supervisors. In the three Business Units that we have been
18 talking about, East, West, and DAP, there are Production
19 Supervisors?

20 A Yes.

21 Q And on first shift, is there a Production Supervisor in
22 each of those Business Units?

23 A Yes, and -- yes.

24 Q And in the course of regular business, a regular work day,
25 does the Production Supervisor have any interaction with the

1 Maintenance employees who are assigned to his or her Business
2 Unit?

3 A Yes.

4 Q And what kind of interactions do they have?

5 A It is throughout the day, so particularly when the lines
6 are getting ready to start up or just prior to starting up, the
7 Maintenance Supervisor -- I'm sorry, the Production Supervisors
8 are walking the lines looking at any issues that may have
9 arisen from cleaning and reassembly and getting ready to start
10 the lines, and if there are any issues, they will page a
11 Maintenance Tech to the line or they will find a Maintenance
12 Tech and ask him to go and pay attention to that particular
13 issue. Not just the Maintenance -- the Production Supervisors,
14 but the Ice Cream Makers, as well, but the Production
15 Supervisors, their responsibility is to do everything they can
16 to support production, and make sure the lines are starting on
17 time, and as part of that initiative, it is to make sure there
18 is support there, make sure that our people are there and ready
19 to go.

20 Q And so, does it happen that Production Supervisors can
21 give direction on work activities, and instruction on work
22 activities on Maintenance employees?

23 MR. STERN: Objection, leading.

24 HEARING OFFICER PALENCIA: Can we break down the question
25 and then also rephrase, because it is a two-part question.

1 MR. BOBBER: Okay.

2 HEARING OFFICER PALENCIA: Give instruction and -- I
3 assume you will give examples, and I assume you are going to
4 that, right?

5 MR. BOBBER: Sure.

6 Q BY MR. BOBBER: What kind of direction does -- do your
7 Production Supervisors in the Business Units give to
8 Maintenance employees on their work activities?

9 A Anytime there is trouble on a line, they will direct the
10 Maintenance Mechanic over to that issue to help address it.
11 Anytime a production person, if they can't figure it out, or
12 fix the issue themselves, the Maintenance -- the Production
13 Supervisor will either page or find a Maintenance Mechanic and
14 ask them to go over there and stay there until it is fixed.

15 HEARING OFFICER PALENCIA: But if the Maintenance employee
16 is having an issue, and they have a Maintenance Supervisor
17 present, how does that work?

18 THE WITNESS: If the Maintenance Mechanic is having an
19 issue?

20 HEARING OFFICER PALENCIA: If the Maintenance employee is
21 having -- I'm sorry, if the production employee is having an
22 issue with one of the machines, or the line, and a Maintenance
23 employee needs to be called, wouldn't that production employee
24 go to their immediate supervisor?

25 THE WITNESS: To the Production Supervisor?

1 HEARING OFFICER PALENCIA: To the Production Supervisor,
2 yes.

3 THE WITNESS: Yeah, in some cases, but typically, no.

4 They will call and page Maintenance over the intercom to come
5 to their line.

6 HEARING OFFICER PALENCIA: The employee will?

7 THE WITNESS: The Production employee would page --

8 HEARING OFFICER PALENCIA: The Production employee would
9 page the Maintenance Techs to that line?

10 THE WITNESS: -- the Maintenance Tech to that line, yes.

11 HEARING OFFICER PALENCIA: And is there a particular
12 Maintenance employee that they will page?

13 THE WITNESS: They will just get on the PA and say,
14 "Maintenance come to Rollo 5."

15 HEARING OFFICER PALENCIA: And give me an example for what
16 reasons they would page, what type of problems?

17 THE WITNESS: On a Rollo line, it could be the ice cream
18 freezer, it could be a filler; it could be a -- the wrapper
19 that is not sealing. The wrap is not sealing; that is a common
20 problem. The cartoner isn't gluing, so the cartons aren't
21 being glued shut, and staying shut after they come out of the
22 cartoner. Things like that.

23 Q BY MR. BOBBER: In the Business Units on the Production
24 floor, East, West, and DAP, will you please explain to us --
25 well, first of all, let me ask you a foundational question.

1 During the course of a work day, do the Production
2 employees in a business unit interact with the Maintenance
3 employees who are assigned to that Business Unit?

4 A During the production day?

5 Q Yes.

6 A Yeah, absolutely. They -- the -- so, typically, when the
7 Ice Cream Makers are on the line, they come -- say, a new crew
8 comes in, they have their shift hand-offs. They go to the
9 line. Maintenance personnel, especially at start up, they are
10 there standing by and making sure everything is going well, and
11 addresses any issues that may come up during start-ups. The
12 whole idea of start-ups is that Production should not have to
13 page Main, because Maintenance should already be out there on
14 the line. That is the expectation, because we want to have --
15 the better start ups you have in the morning, typically
16 dictates the rest of the day, on how the line runs, so we do
17 everything we can to hit a hundred percent start-ups. And, to
18 do that, the Maintenance Mechanics and the Production people
19 pretty much have to be dialed in with each other about what is
20 going on, if there are any issues.

21 Q What is the Maintenance Mechanic's specific role with
22 respect to starting up the lines?

23 A Well, there -- you know, I mean, if you look at -- there
24 are several. So, if you look at third shift Maintenance, third
25 shift Maintenance is there to support third shift production.

1 Third shift Production, every night, tears apart the equipment,
2 takes apart all of the machines, guards off, in some cases,
3 takes the covers off, parts out, disassembles fillers, cleans,
4 sanitizes, and then reassembles, so on third shift, Maintenance
5 support is there to help with any issues that Production might
6 find as they tear apart equipment, so if they tear apart a
7 filler, for example, and one of the filler stems is dinged up
8 and that will cause it to leak when they start up, so the
9 Production person would tell the Maintenance person, "Hey, this
10 part is bad," and either the Mechanic will go get another part
11 out of our stock room, MRO, or he will take it to the shop, and
12 the Machine Shop will buff it out and clean it up and bring it
13 back, and he will reassemble the equipment. That is critical
14 on third shift.

15 And then, prior to the line starting up, there is what we
16 call a pre-flight, so the line is essentially a dry run, so we
17 run wrap through the wrappers, make sure it seals. We run
18 cartons through the cartoner, make sure they glue. There are
19 five at the metal detector and check wear and are set up
20 properly, and working, and that is all -- that is all done by
21 Production, so Maintenance is there for support.

22 And then, once the line does start up, if there are any
23 issues, then Maintenance is there to work together with the Ice
24 Cream Makers to resolve the issue.

25 Q And what kinds of things do you see as issues in starting

1 up lines, where Maintenance people would have to get involved
2 with the Production people to solve it?

3 A Typically it is the -- it is the bigger issues, so I mean,
4 there is little fine-tuning. You can have a piece of equipment
5 that is center-lined. Center-lined just basically means that
6 all of the set points are marked on the piece of equipment, so
7 you know where everything is supposed to be, but there is still
8 a little bit of dialing in that has to be done.

9 Typically, the Ice Cream Makers can do that, and in some
10 cases, that doesn't do it. That doesn't solve the issue, so
11 the Maintenance Mechanic is then called to come in and
12 intervene and help us get it running.

13 Q Beyond start-up, during the course of a shift, are there
14 other ways in which the Production employees, on a particular
15 line, interact with the Maintenance employees assigned to their
16 Business Unit?

17 A Can you repeat that?

18 Q Other than start-up, during the remainder of the work
19 shift, are there any other ways in which the Production
20 employees on a line would interact with Maintenance employees
21 assigned to their Business Unit?

22 A So, yeah. I mean, they -- we have daily operational
23 reviews where Maintenance is typically there and Production is
24 there. Usually one person from each department. We talk about
25 the results from the prior day, any BDA's, Breakdown Analysis,

1 they need to be completed to find root causes of issues, and
2 they have those meetings.

3 Typically when they are doing so, Production Ice Cream
4 Makers, they calibrate their own metal detectors and check
5 weighers. There are instances where they may not be able to
6 calibrate it properly, so Maintenance is called and comes over
7 to assist them with getting -- with calibrating the piece of
8 equipment.

9 Q Okay.

10 A It is -- I mean, it is -- it is team work. Everybody is
11 just working together all day long pretty much. I mean, there
12 is interaction throughout the shift, so Mechanics are on the
13 floor, Production is on the floor. We -- and it is just an
14 interaction all day.

15 Q Are --

16 MR. BOBBER: Yes, ma'am?

17 HEARING OFFICER PALENCIA: Are you going -- with respect
18 to the daily operation reviews, are these meetings that are --
19 I am a little confused.

20 Are these management meetings or -- that are held in
21 different places of the facility, or at -- or are they at the
22 particular unit where employees are working?

23 THE WITNESS: So, the daily operation reviews are held in
24 the team rooms, in the -- do you want me to show you on here?

25 HEARING OFFICER PALENCIA: Is there a team room for every

1 unit?

2 THE WITNESS: Yes. So, they are held in the team rooms.
3 Sometimes there will be a Maintenance Group Leader there.
4 Sometimes a Maintenance Mechanic, and sometimes a Maintenance
5 Supervisor. There is a Production Supervisor there, Quality is
6 there, Safety is there, and Production typically -- a
7 Production person typically comes, an Ice Cream Maker comes.

8 HEARING OFFICER PALENCIA: And you said a Maintenance
9 employee would be there; is that like a lead person or could it
10 be any Maintenance employee?

11 THE WITNESS: Typically, it is like a Maintenance Group
12 Leader. When he can't make it, then a Maintenance Mechanic
13 comes, and in some Daily Operation Reviews, the Maintenance
14 Supervisor comes, and that -- it is again, if the Maintenance
15 Supervisor can't come, then the Group Leader or a Mechanic will
16 show up.

17 HEARING OFFICER PALENCIA: Okay, these are daily meetings.

18 THE WITNESS: Uh-huh.

19 HEARING OFFICER PALENCIA: And in a given week, how often
20 do you have a regular Maintenance employee showing up to these
21 meetings?

22 THE WITNESS: It would depend on issues that we are
23 having. It could be -- it could be three days, it could be
24 five days. It just depends.

25 HEARING OFFICER PALENCIA: Is there, in your experience in

1 the past six months, do you attend these meetings, I'm sorry,
2 these daily operation meetings?

3 THE WITNESS: I did when I was a Production Unit Manager.
4 We had -- we had Mechanics come in a few times a week to report
5 on issues, breakdowns that we had, to talk about root causes
6 and things like that.

7 HEARING OFFICER PALENCIA: Go ahead.

8 Q BY MR. BOBBER: Mr. Beyeler, do you see any instances out
9 on the Production floor of Maintenance employees performing any
10 duties that are duties routinely performed by the Production
11 employees?

12 A Occasionally.

13 Q What kinds of things?

14 A When -- for example, if we are having trouble with the
15 cartoner, and a lot of repack is created, so repack is created
16 when the cartoner stops, and product is still coming down the
17 line. The Production folks stack it off into repack bins, put
18 it in a freezer. Once the -- and call Maintenance if they
19 can't figure it out.

20 Once it is fixed and running well, sometimes the
21 Maintenance guys will help them put the repack back in. The
22 Maintenance people also -- will help them with their video jet
23 codes. It is a code that goes on the box; it is like a "Best
24 By" date. The Ice Cream Maker is supposed to be able to put in
25 the code because it changes every day, the Julian date, and

1 sometimes they get a new video jet on the line, or something,
2 where it is powered down and powered up and the message is
3 inverted -- it is inverted and backwards, so the Mechanic can't
4 quite figure it out, and so Maintenance will come over and help
5 them through that. That is about it.

6 The metal detector issues, wear issues, and things like
7 that; calibration. Occasionally there are some areas they do -
8 - primarily do that. In other areas, the -- the operational
9 folks do that, the Production Ice Cream Makers do that, and
10 then Maintenance and Production, they both work on it.

11 So, some areas of the plant, Maintenance is called. If it
12 is out of calibration, some areas of the plant, the Ice Cream
13 Maker recalibrates it and they keep running.

14 HEARING OFFICER PALENCIA: Is that -- is that unusual?

15 THE WITNESS: For the check weigher or metal detector to
16 go out of calibration?

17 HEARING OFFICER PALENCIA: No, for the Ice Cream Maker to
18 calibrate.

19 THE WITNESS: Is it unusual? In some areas of the plant,
20 no, it is not. In some areas of the plant, they are not quite
21 there yet.

22 So, like in E-Snacks, they do. There are some lines in
23 West Snacks where the Ice Cream Makers will.

24 HEARING OFFICER PALENCIA: Do you know why this is the
25 case?

1 THE WITNESS: Because we trained -- we train people.

2 We -- Ice Cream Makers are trained on how to do it, and
3 then for whatever reason, they forget it, forget how to do it,
4 so they call Maintenance and we -- it is really a process of
5 training and following up and retraining to make sure that they
6 understand it.

7 Q BY MR. BOBBER: And let me pick up a little bit on that
8 point, and ask you more generally, do you have Production
9 employees, Ice Cream Makers, who perform any tasks out on the
10 Production floor that historically, traditionally have been
11 Maintenance employee tasks?

12 A Yes. So, we have AM --

13 Q What does that stand for?

14 A It is part of our autonomous maintenance program, Online
15 16, our pilot line. The Production folks do the CIL, cleaning
16 and inspect, lubricate activities on this day. Maintenance is
17 out on the line doing PM's at the same time. Production does
18 the CIL, the defect tags -- so there is defect tags as part of
19 our AM program, that they put on pieces of equipment when they
20 see a bolt missing, a broken hinge, or something minor, and on
21 AM day, that morning, or at the AM meeting, they meet and
22 discuss the defects that are tagged, and then typically those
23 are given to the Production folks, the Ice Cream Makers to go
24 out and fix them. So, missing a bolt, go to MRO and get a new
25 bolt. Missing a cover, a cap, or something like that,

1 tightening up a bolt, tightening up a guard, tightening up a
2 handle on a safety guard, things like that, Production, the Ice
3 Cream Makers will do that.

4 Q Do the Production employees have tools to do these things?

5 A Yes.

6 Q Company-issued?

7 A Yes.

8 Q What kind of tools do you issue to the Production
9 employees?

10 A Combination wrenches, screwdrivers; that is really -- they
11 have a mallet, I believe. We do issue calibrated thermometers
12 through our Quality Department for Ice Cream Makers to check
13 the temperature of their mix throughout the shift. Yeah, that
14 is really about it.

15 Q Other than the pilot line, 16, do you have any Ice Cream
16 Makers on any other production lines doing any CIL, clean,
17 inspect, lube duties that historically were Maintenance --
18 performed by Maintenance personnel?

19 A We used to. We don't any longer. We --

20 MR. STERN: I am going to object. The question has been
21 answered. They don't do it anymore.

22 It is not relevant; it is also way beyond the scope of the
23 question that was asked. The answer to the question is, "No,
24 we don't do it anymore."

25 Let's move on.

1 HEARING OFFICER PALENCIA: I would like to know when --
2 how long ago it was done.

3 Q BY MR. BOBBER: Since when?

4 A It has been about three years ago. We had attempted to
5 roll out a previous version of NCE; back then it was called
6 GPS, Grand Performance System. We had rolled it out on Line
7 16. We had also rolled it out on Rollo 1 and Line 30. The Ice
8 Cream Makers were doing the clean, inspect, and lubricate on
9 those lines, and then once this new version came along, those
10 just -- we stopped it.

11 HEARING OFFICER PALENCIA: Was that part of a pilot
12 program?

13 THE WITNESS: Yeah, Line 16 was the pilot line. We tried
14 to spread it out too fast; too early -- it was still in its
15 infancy and we hadn't gained sustainable results.

16 HEARING OFFICER PALENCIA: Okay, so when it was done
17 before, that was done -- it was done in connection with a pilot
18 program?

19 THE WITNESS: Correct.

20 HEARING OFFICER PALENCIA: Go ahead.

21 Q BY MR. BOBBER: Does the plant have a regular shutdown
22 during a year?

23 A Yes.

24 Q When is that?

25 A It varies. This year it is going to be -- it is going to

1 be right around December 27th through January 17th.

2 Q And on an annual basis, is it a two-week period?

3 A Sometimes, it is two weeks and sometimes it is a month.

4 It just depends on the amount of work that has to be done.

5 Q But it happens every year?

6 A Yeah, typically. Yes, we are down a few weeks every year.

7 Q During shutdown, is there any work activity going on in
8 the plant?

9 A Absolutely, yes.

10 Q What do you do?

11 A The Maintenance Mechanics, we have a lot of Maintenance
12 Mechanics in, all of them, and actually going through lines;
13 some lines are rebuilt. We have Facilities in doing brick
14 work, floor work. We have contractors in doing major work that
15 would require extra rigging and so forth, typically in the
16 Engine Room or outside. We have -- there is a lot of painting,
17 a lot of cleaning; stuff like that going on.

18 Q Does the Company permit the Production employees to work
19 during the shutdown?

20 A Yes, we have -- we typically have a handful and maybe, I
21 don't know, up to a dozen production folks working, primarily
22 with Facilities. A few may work with the Production Mechanics,
23 rebuilding extractors, [indiscernible] blocks, doing extra
24 cleaning on the equipment and so forth. When it is all torn
25 down, they will get in there and clean it really good and they

1 will clean up parts for us, rebuild parts.

2 For Facilities, they come in and they will do painting.

3 Typically it is painting; sometimes they will do floor work and
4 stuff like that.

5 Q And how is it that certain Production employees get
6 selected for the opportunity to do work on shutdown?

7 A They sign up on a list, you know, and I don't recall what
8 the selection process is from that. I just know that there is
9 a list and I am not sure of the selection process.

10 Q In your facility, on the production lines, do you
11 experience such a thing called a change-over?

12 A Yes.

13 Q What is a change-over?

14 A A change-over is when we built -- when a line goes from
15 one product to another, so that requires -- it could be a bar
16 size change, which requires parts to be changed out, and
17 equipment to be dialed in to run that particular product.

18 Q You mean, because the new product you are going to run is
19 a different size than the prior product?

20 A Correct. Different size and the carton size is a
21 different size, and possibly the case size is a different size.

22 Q Give us some understanding, please of how often a
23 particular production line in your facility would experience a
24 change-over?

25 A Some lines, hardly ever. Others, almost every week. For

1 example, a Rollo line, we change it over just about every week.

2 Q And when a -- a line is going to go through a changeover,
3 do the Production employees assigned to that line participate
4 in the activity to make the changeover happen?

5 A Yes.

6 Q What do they do?

7 A The Ice Cream Makers, they do -- for the Rollo line, they
8 will do a malt table change, which is quite large, and it comes
9 off in sections, so they do the malt table change. In some
10 cases, if there is a tape machine, they will adjust the tape
11 machine to accommodate the case size. Maintenance will be
12 doing the cartoner because there has to be -- chains have to be
13 adjusted and so forth; they have to be precise, so Maintenance
14 does that piece changeover.

15 Q So, when a line is experiencing a changeover, are there
16 both Maintenance and Production employees working on that
17 changeover at the same time?

18 A shutdown?

19 A Yes, we have -- we typically have a handful and maybe, I
20 don't know, up to a dozen production folks working, primarily
21 with Facilities. A few may work with the Production Mechanics,
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11 doing the cartoner because there has to be -- chains have to be
12 adjusted and so forth; they have to be precise, so Maintenance
13 does that piece changeover.

14 Q So, when a line is experiencing a changeover, are there
15 both Maintenance and Production employees working on that
16 changeover at the same time?

17 A Yes.

18 Q Are they required to communicate with each other in
19 coordination of their respected activities?

20 A Yeah. I mean, they -- when -- one has to wait for the
21 other essentially before we can pre-flight it, so Production
22 will be working on the malt table, Maintenance will be working
23 on the cartoner. When the malt table is completed, they will
24 let the Maintenance Mechanics know, or vice-versa, whoever gets
25 finished first will let the other know, so we can then either

1 reclean and sanitize the line; if it is a product with contact
2 surface, we will have to resanitize and clean, and then we can
3 pre-flight and start up.

4 Q In your Maintenance group, do you have somebody
5 responsible for implementing and training?

6 A Yes, we have a training group leader.

7 Q Who is that?

8 A His name is Fred Cruz.

9 Q And what types of topics does he provide training on?

10 A Fred, himself, he does video jet training, metal detector
11 check wear training, ice cream freezer training. He also is in
12 charge of our computer-based training, which is called TPC, and
13 I don't know what that stands for, but it is computer-based
14 training for Mechanics.

15 Q And those other topics that you listed, are those also
16 trainings provided to Mechanics?

17 A Those are trainings provided to Mechanics, as well as
18 Production.

19 Q So, your Maintenance Department training guy, Fred Cruz --

20 A Uh-huh.

21 Q -- provides training on those topics to Production
22 employees?

23 A Correct.

24 Q Why is it that you are training the Production employees?

25 A We train the Ice Cream Maker II's, because they are

1 essentially the lead operators of the line. They need to know
2 how the ice cream freezer works. If something is going wrong
3 with the ice cream freezer such as viscosity error in the
4 product flow, they need to understand how to adjust it. They
5 also need to know how to take over-run samples, which over-run
6 is just simply air in the ice cream, and he teaches them all
7 about that whole aspect of that.

8 Video jets, how to clean a video jet head. It is pretty
9 simple but you have got to know the steps to do it. How to
10 enter the right code, the date code on the video jets, and then
11 how to calibrate the check wear and metal detectors.

12 Q And are those tests that you just described, things that
13 your Maintenance Department Training Coordinator will train
14 Production employees on, cover those tasks that in your plant,
15 can also be performed by Maintenance employees?

16 A Oh, sure, yeah.

17 Q And are?

18 A Yeah, sometimes, yeah.

19 Q Sometimes, do your production lines break down?

20 A Oh, yes.

21 Q Give us a -- give us some examples of the more typical
22 types or causes, I guess I should say, of breakdowns.

23 A Freezer fluctuation, so the gallons, the flow of the ice
24 cream coming out of the freezer, fluctuates, pulsates; it gets
25 faster and slower and faster and slower. Wrapper problems; we

1 have a lot of wrapper issues where the wrap doesn't seal
2 properly, so when the fire comes out, there is openings in the
3 wrap. Cartoners; cartoners seem to come and go; it is a big
4 issue -- cartoner jams, in particular.

5 Q When a production line experiences a breakdown, what
6 happens next?

7 A Depending on the severity of the breakdown, on what the
8 issue is, they will shut down. Either the Ice Cream Maker --
9 the Ice Cream Maker will typically go over and assess and see
10 what is going on. If it is something minor, they could lock
11 out the machine and tighten it up, or move the whatever it is,
12 say the suction cups, say it is. If they don't see what it is
13 or it is something more than that, they will call Maintenance.
14 Maintenance will come over. The Ice Cream Maker II and the
15 Maintenance Mechanic -- the Maintenance Mechanic will work on
16 it, bargaining unit the Ice Cream Maker II stays there as a
17 resource to learn about what are you doing, so next time,
18 maybe, I can do that myself, depending on what it is. So, they
19 typically stay together while the repair is being made.

20 The rest of the Ice Cream Makers, the Ice Cream Maker I's,
21 they will clean up the line and get it prepared to restart, so
22 when the repair is done, they can get started back up.

23 Q Okay. When the Ice Cream Maker II and the Maintenance
24 Mechanic have completed the fix on the cause of the breakdown,
25 is there any documentation created of the problem and the work

1 on the fix?

2 A Yeah, there is a -- our database that we record our
3 performance, our case count, waste, is called SAM. Every line
4 has a computer. Some cases, two lines share a computer, but
5 that information is entered into the computer by the Ice Cream
6 Maker II, with the input, of course, of the Mechanic of what
7 work they did, and then that all shows up on a report that we
8 can -- in the Maintenance Department, we can look at that
9 report to figure out what our time between failure is. Of
10 course the higher mean time between failure the better.
11 Production also uses those reports to look at their case
12 counts, to look at performance, overall performance, line
13 performance, and waste.

14 Q Okay, I want to understand the respective roles in the
15 creation of the report. The Ice Cream Maker II actually sits
16 at the computer keyboard and inputs he information for the
17 report.

18 A Correct.

19 Q And what is the role of the Maintenance Mechanic who was
20 involved in the fix?

21 A So he -- he gives that information, the specific
22 information, so what we always try to do and what we strive for
23 is we need to -- we need to know what the issue was, what did
24 we do to fix it, and then what do we do to prevent it from
25 happening again.

1 That is the three key issues we needed to have documented.
2 It doesn't always happen, but that is what we shoot for, so it
3 is important to have specific information inputted, because we
4 use that document to drive improvement. So, what are our top
5 three issues for the week, we go after it. We and Production
6 go after it to try to --

7 HEARING OFFICER PALENCIA: And when that report is being
8 -- when the Ice Cream Maker writes or prepares that report in
9 the computer, the report is based on information from his
10 experience of what the problem was?

11 THE WITNESS: If the Ice Cream Maker was the one that
12 fixed it, yes. If Maintenance came over, it would be what
13 Maintenance -- the feedback of what Maintenance gave them, to
14 put I what the fix was.

15 HEARING OFFICER PALENCIA: And then, I am not clear, does
16 the -- who takes that report?

17 THE WITNESS: The -- well, it is entered into a database,
18 so anybody can access it at any computer terminal, basically,
19 and look it up and print it.

20 MR. BOBBER: Sir, what number am I?

21 THE COURT REPORTER: The next in order is 16.

22 MR. BOBBER: Thank you.

23 **(Employer's Exhibit No. 16, marked for identification.)**

24 Q BY MR. BOBBER: Mr. Beeler, I have just had handed to you
25 a copy of a document marked Employer's Exhibit No. 16. Would

1 you look at this and tell us what this is, if you know, please?

2 A So, this is a -- essentially it is a downtime report. It
3 is reporting out the shift, comments first, comments, "Stopped
4 at Joe's," the stoppage sub-groups and groups, and the line
5 number, and equipment.

6 Q Now, is this an example of the type of reporting from a
7 breakdown that we were just talking about before --

8 A Yes.

9 Q -- identifying the exhibit?

10 A Yeah, this is typical, yes.

11 Q So, if you went into the computer system to see what
12 somebody had entered for a particular breakdown, this is the
13 report you see?

14 A Correct.

15 Q And reading across in a row, that all relates to one
16 circumstance of a breakdown?

17 A Correct.

18 THE COURT REPORTER: Can you get closer to the microphone,
19 please.

20 MR. BOBBER: Yes, sir.

21 THE COURT REPORTER: Thank you.

22 Q BY MR. BOBBER: And in the regular reporting, an example
23 of which this document is, do you see instances where the
24 production employee who is entering the data confirms that a
25 Maintenance employee, as opposed to a -- just a Production

1 employee, implemented the fix?

2 A Yeah, in the column under the heading Stoppages, it shows
3 operational things that the operational folks did. If a
4 Mechanic came in and did something, it would say "Technical"

5 MR. STERN: I'm sorry, there gives several stoppage rows
6 or columns. Which one of them are you referring to?

7 THE WITNESS: This -- under "Stoppages" right here, there
8 is --

9 HEARING OFFICER PALENCIA: I'm sorry, what are you
10 referring to? Which one are you referring to?

11 MR. STERN: Thank you.

12 HEARING OFFICER PALENCIA: Okay, so we have CCLI --

13 THE WITNESS: Correct.

14 HEARING OFFICER PALENCIA: What does that mean?

15 THE WITNESS: I am not sure what that means.

16 HEARING OFFICER PALENCIA: Okay, and then -- but under
17 CCLI, you have what appears to be a code, and then next to that
18 there is a location. For example, the first line is Central
19 Snack.

20 THE WITNESS: Correct.

21 HEARING OFFICER PALENCIA: Does that tell us where it
22 occurred?

23 THE WITNESS: That tells you the line, the department and
24 the line that it was on, correct, and then the machine, under
25 Machine, it will tell you what machine that the occurrence was.

1 HEARING OFFICER PALENCIA: Before we go on "Machine," for
2 example the first line says Sandwich 17.

3 THE WITNESS: Uh-huh.

4 HEARING OFFICER PALENCIA: What does that describe?

5 THE WITNESS: That is Sandwich Line 17 in Central Snacks.

6 HEARING OFFICER PALENCIA: Okay, under Machine, it tells
7 us what machine was affected?

8 THE WITNESS: Freezer A, correct. And then stoppage
9 class, that means it was an efficiency loss. The Stoppage
10 Group --

11 HEARING OFFICER PALENCIA: What other type of -- other
12 than efficiency loss would you have?

13 THE WITNESS: It can be under Other Stoppages listed under
14 it.

15 HEARING OFFICER PALENCIA: Okay, and then Stoppage Groups,
16 the next line is Stoppage Groups.

17 THE WITNESS: Correct.

18 HEARING OFFICER PALENCIA: What does that describe?

19 THE WITNESS: So, is it a process failure or is it a
20 breakdown or is it waste, one of those. So, if it is a
21 breakdown, then parts -- a part was replaced.

22 HEARING OFFICER PALENCIA: If it is a process failure,
23 what does that mean?

24 THE WITNESS: A process failure is where an adjustment had
25 to be made. No parts were replaced.

1 HEARING OFFICER PALENCIA: What about Rework and Waste?

2 THE WITNESS: Rework and Waste is simply just waste or
3 rework. The line stopped and we created -- we either threw a
4 bunch of product in the trash can, or we able to reclaim it and
5 rework it.

6 THE COURT: Okay, and then Stoppage Sub-groups, what is
7 underneath that? What info would we find?

8 THE WITNESS: So, there is Waste, Utility System, jams,
9 adjustments, quality --

10 HEARING OFFICER PALENCIA: So, does that describe the kind
11 of problem that occurred or the --

12 THE WITNESS: Yeah, it is the kind of problem that
13 occurred. Was it a Mechanical issue? Was it a utility
14 systems, for example? Utility systems, to the right of that,
15 it says refrigeration parts replaced.

16 HEARING OFFICER PALENCIA: If it was under a Stoppage Sub-
17 group, if it was an adjustment, that would mean that it
18 required an adjustment?

19 THE WITNESS: An operational adjustment, yeah.

20 HEARING OFFICER PALENCIA: Okay.

21 THE WITNESS: Then under Stoppages, efficiency loss;
22 again, there were refrigeration parts replaced, or Mechanical
23 failure, where no parts were replaced, but blockages, jams,
24 operational issues. It just kind of outlines what -- what it
25 was.

1 HEARING OFFICER PALENCIA: Okay, and I am sorry, but let's
2 go back to your questioning, Mr. Bobber, and what you -- you
3 were referring to what column?

4 MR. BOBBER: The Comments column on the far right.

5 HEARING OFFICER PALENCIA: On the far right? Okay.

6 Q BY MR. BOBBER: And in the Comment column, does the
7 Production employee who is submitting the data with respect to
8 a breakdown, make any indication as to whether or not a
9 Maintenance employee was involved in performing the fix?

10 A So, in -- for example, the second item down, Sandwich Line
11 17, Freezer B, it was a breakdown. Utility Systems,
12 refrigeration parts replace; replaced blades on freezer.
13 Maintenance replaced the blades on the freezer. So, that is an
14 example of where Maintenance' work was done. There are other
15 issues. For example, farther down, where you can see Process
16 Failures, there were jams, operational, box jams, box is not
17 opening, cartoner jams, build-up of material on machine. It
18 was unplanned cleaning. It is a process failure. Video jet
19 dirty; line down to clean. The last one, bundler wrap got
20 broke; got back up, broke down, repack.

21 Q When you have something like a jam, do you have production
22 employees that fix that type of product on their own, without
23 implicating Maintenance employees?

24 A Yeah, cartoner jam or every wrapper jams, or things like
25 that, the Ice Cream Makers will yes, clear the jam.

1 Q And then, in some instances where you have a jam like a
2 cartoner jam, do you have a Maintenance employee that does the
3 work of fixing the jam?

4 A Yes, in some cases, if we continue to get jams repeatedly,
5 we keep clearing it, starting it up, the Ice Cream Makers can't
6 understand or can't see what is causing it, they will call
7 Maintenance and Maintenance will come over and take a look at
8 it.

9 Q And I want to be clear for our record, what specifically
10 is represented by this Employer's Exhibit No. 16? This is just
11 a sample of some of the information in your SAM system; is that
12 right?

13 A That's correct.

14 Q And can you tell us from a time period or a plant location
15 area or any other criteria, can you tell us for this example
16 that we see here as Employer's Exhibit No. 16, what does this
17 sample cover?

18 A Well, this covers Line 17. It covers Sandwiches - Line 17
19 -- well, across the top, the Lines -- Sandwich Line 17, 18, 19,
20 Push-Ups 23, 24, 25, Big Drum Line 10, Cone Lines 12, 13, 14,
21 15, and 16, Rollo 2, Rollo 3, Rollo 4, Rollo 5, Line 7, Line 8,
22 and it dates -- it ranges from October 3rd to October 25th.

23 Q How many pages is your Exhibit No. 16?

24 A Three pages.

25 Q And at the end of the third page, what -- what line is

1 being referenced there?

2 A Big Drum Line 10.

3 MR. BOBBER: Madame Hearing Officer, I will offer
4 Employer's Exhibit No. 16 into evidence.

5 HEARING OFFICER PALENCIA: Any objection?

6 MR. STERN: No.

7 HEARING OFFICER PALENCIA: Employer's Exhibit No. 16, it
8 is received into evidence.

9 **(Employer's Exhibit No. 16, received into evidence.)**

10 HEARING OFFICER PALENCIA: With respect, if I may, you
11 testified that -- in the comment in Employer's Exhibit No. 16,
12 the Production employee would indicate whether the Maintenance
13 employee was involved in fixing the problem, and there was the
14 example of a jam.

15 THE WITNESS: Uh-huh.

16 HEARING OFFICER PALENCIA: Now, explain to me, if there is
17 a jam, how -- how complicate is it to see where there is a jam
18 and to fix the jam problem?

19 THE WITNESS: You can see, like cartoner machine, it has
20 doors on it that are expanded metal, so that you can see
21 through like squares, there are little squares. You can see
22 what is happening at all times, and depending on what it is, it
23 could be a minor jam or it could be a major jam. It could be
24 that the boxes are falling out of the magazine, which is what
25 holds the cartons in there, and a suction cup comes up and

1 grabs them and pulls them down and they open and then they
2 fill. It could be as simple as that transition. It could be a
3 jam pretty farther don to where the bars are actually loaded
4 into the carton. That would cause -- it is called the torque
5 guard. It is a piece of equipment on the cartoner that if
6 there is too much force exerted, it will kick out the drive
7 system. If that happens, Maintenance has to come over and --
8 with a pipe wrench and --

9 HEARING OFFICER PALENCIA: So, would it be fair to say
10 that when a Production employee -- I'm sorry, when a
11 Maintenance employee is involved in fixing, say like a jam or
12 something -- in Employer's Exhibit No. 16, it is pretty minor,
13 a simple problem.

14 THE WITNESS: When Maintenance comes over?

15 HEARING OFFICER PALENCIA: When -- if a Maintenance -- I'm
16 sorry, if a Production employee fixes the problem of the jam and
17 he doesn't call a Maintenance employee, would it be fair to say
18 that it was a minor problem?

19 MR. BOBBER: I would just object as to vague, as to minor.
20 It really -- by what measurement? Financial impact?

21 HEARING OFFICER PALENCIA: Would it be fair to say that
22 the --

23 MR. STERN: And I am going to object to that objection
24 because it was a really sticking objection to coach the
25 witness. This witness has used the term "minor" in his

1 testimony. Counsel didn't object then, but when you asked the
2 question, he is afraid of the answer and he objects.

3 Again, I will request that the Decision-Maker take that
4 into account.

5 HEARING OFFICER PALENCIA: Well, I want to explore this
6 issue.

7 MR. STERN: I have no problem with you exploring it.

8 HEARING OFFICER PALENCIA: Let's explore this issue.

9 MR. STERN: I have a problem with his speaking objection.

10 HEARING OFFICER PALENCIA: What I am trying to do -- I am
11 attempting to have the record reflect what type of problems. I
12 am assuming that a Maintenance employee -- sorry, a Production
13 employee wouldn't necessarily have all of the knowledge to fix
14 every problem that comes up with a machine, or every jam, is
15 that correct?

16 THE WITNESS: Correct.

17 HEARING OFFICER PALENCIA: Is it fair to say that there
18 are only certain types of say jams, that a Maintenance employee
19 fixes -- I'm sorry, the production employee fixes?

20 THE WITNESS: It is hard to say. There is a certain kind
21 of jam. A jam could be caused by so many different things.

22 HEARING OFFICER PALENCIA: But you said that if it is-- if
23 the problem is visible -- you testified about a jam that was
24 visible. You could clearly see that it was a jam that got
25 caught, and I am assuming that the Production employee could

1 just pull whatever was causing that jam, correct?

2 THE WITNESS: In some cases.

3 HEARING OFFICER PALENCIA: In some cases. If they pull it
4 -- if it is as easy as just pulling whatever is causing the jam
5 and the problem is fixed --

6 THE WITNESS: Uh-huh.

7 HEARING OFFICER PALENCIA: Would it be correct to say that
8 that is pretty minor?

9 THE WITNESS: Yes, to pull something out of the way,
10 correct.

11 HEARING OFFICER PALENCIA: If they pulled that and it is
12 not fixable, would it be accurate to say that at that point, a
13 Maintenance employee would be called?

14 THE WITNESS: Not necessarily.

15 HEARING OFFICER PALENCIA: Not necessarily because?

16 THE WITNESS: Because if it wasn't something they could
17 just pull out of the way, it may be a -- something they may
18 need to get their screwdriver to tighten down a clamp on the
19 suction cup or a tool to tighten something up.

20 HEARING OFFICER PALENCIA: If something needs to be
21 tightened --

22 THE WITNESS: They could do that, in some cases.

23 HEARING OFFICER PALENCIA: In some cases, but it is not
24 always done?

25 THE WITNESS: Not all of the time.

1 HEARING OFFICER PALENCIA: And they would have to know
2 that they have to do that, correct?

3 THE WITNESS: The Ice Cream Makers, they would know, you
4 know, yeah.

5 HEARING OFFICER PALENCIA: How would they know?

6 THE WITNESS: Because if it is to a point where a part has
7 to be replaced, that is -- Maintenance does that. If there is
8 a part missing, like it rattled loose and fell off onto the
9 ground, then Production would call Maintenance -- well, in
10 Production while some folks are trying to find the part, the
11 piece, Maintenance would have to come over and re-attach it
12 because, for example, if it is a screw that holds a guide on,
13 maybe it needs Lock-Tite™ put on it, so that it doesn't vibrate
14 loose again. Because if something vibrates loose, then you
15 have to take alternative steps, additional steps to keep it
16 from vibrating loose again. So, they would call Maintenance to
17 come over and put on -- maybe put on some Lock-Tite™ --

18 HEARING OFFICER PALENCIA: But is it fair to say that you
19 don't want your Production employees to be -- you know, to be
20 getting too involved with fixing your -- the machines because
21 they don't have the expertise of -- that your Maintenance
22 employees do; correct?

23 THE WITNESS: In most cases.

24 HEARING OFFICER PALENCIA: Please proceed.

25 Q BY MR. BOBBER: In Mr. Pritchard's testimony, he talked

1 about weekly meetings every month that covered on a rotating
2 basis, quality, safety, people and business results topics. Do
3 you remember that testimony?

4 A Yes.

5 Q Are you involved in those weekly meetings?

6 A I -- in Production, I was. I have not got involved yet in
7 Maintenance.

8 Q So, when you had a Production role, tell us what types of
9 hourly employees were in those weekly meetings?

10 A It was Production -- occasionally there were Safety reps
11 there to report. In the past, we had -- in the past, we had a
12 Maintenance Mechanic there from each Business Unit, but for
13 whatever reason, that stopped several months ago, and we never
14 did get back on that -- on board with that. I did actually
15 talk to -- I am rambling -- I did talk to the Maintenance
16 coaches and said that we needed to restart that, but they
17 haven't started it yet.

18 MR. STERN: I am going to object and move to strike.
19 Everybody after the list of people that he said that attended
20 the meeting, which was the question that was asked.

21 HEARING OFFICER PALENCIA: I am going to deny that and
22 allow it and let the Decision-Writer decided what weight they
23 want to give to that testimony.

24 Q BY MR. BOBBER: Are your Production employees at the
25 Bakersfield plant subject to call-ins?

1 A Yes.

2 Q And how frequently does that happen that a Production
3 employee will get called in?

4 A Almost every weekend; yeah, almost every weekend.

5 Q Now, they don't have the Nextel™ radios do they?

6 A No.

7 Q So, how do you reach them?

8 A Their home phone.

9 Q Is there such a thing at the plant called PM Days?

10 A Yes.

11 Q What does that mean?

12 A Preventive Maintenance Days. Each line has a PM Day which
13 what that means is that the line has anywhere from a two to
14 four-hour late start, so PM's and plant work can be done on
15 those lines.

16 Q And PM stands for?

17 A Preventive Maintenance.

18 Q When you have a PM day on a line -- well, first let me ask
19 you, how frequently does that happen?

20 A Weekly, every week.

21 Q So, on the PM day for a line, who works on the preventive
22 maintenance activities?

23 A We have the Ice Cream Maker II's come in with the
24 Mechanics, so they can work with the Mechanic. The Mechanics
25 have the PM's so the Ice Cream Maker II's work with them so

1 that they can learn their equipment better.

2 Q And when you say "work with them," do you mean side by
3 side?

4 A Yes.

5 MR. STERN: Objection, leading.

6 HEARING OFFICER PALENCIA: Overruled.

7 Q BY MR. BOBBER: Was that a "yes?" You just said, "uh-
8 huh."

9 A I'm sorry.

10 HEARING OFFICER PALENCIA: Do all of your Maintenance
11 employees work on PM days?

12 THE WITNESS: Not all of the Maintenance employees. No,
13 they are on a rotating schedule, so they wouldn't all be there
14 at the same time.

15 HEARING OFFICER PALENCIA: But if you have a two to four-
16 hour late start, is that for every shift on that day?

17 THE WITNESS: No, just for first shift.

18 HEARING OFFICER PALENCIA: Just for first shift?

19 THE WITNESS: Correct.

20 HEARING OFFICER PALENCIA: Okay, so for first shift, do
21 all of your Maintenance employees, are they there during the
22 beginning of that shift?

23 THE WITNESS: All of the Maintenance --

24 HEARING OFFICER PALENCIA: Do all of the Maintenance
25 employees who generally work that shift, are they present for

1 that PM activity --

2 THE WITNESS: Yeah, if it is not their scheduled day off,
3 yes. They are typically there, yes.

4 HEARING OFFICER PALENCIA: Okay, what about your
5 Production employees?

6 THE WITNESS: Yes, if they are scheduled to work that day.

7 HEARING OFFICER PALENCIA: And work side by side, tell me
8 what that entails.

9 THE WITNESS: Basically they -- we have told them that
10 they need to follow the Mechanic around, ask questions, see
11 what they are doing, see what they are checking, see what they
12 are listening for, so they can better understand their
13 equipment. Which all of that goes back to our autonomous
14 maintenance, NCE program.

15 HEARING OFFICER PALENCIA: So they are just paying
16 attention?

17 THE WITNESS: Paying attention and asking -- and learning
18 what to look for on their line that may fail.

19 Q BY MR. BOBBER: Mr. Beyeler, would you please find in
20 your stack of exhibits there on the countertop, the Employer's
21 Exhibit No. 6?

22 A Yes.

23 Q This has been identified as the Ice Cream Maker II job
24 description. Do you see that?

25 A Yes.

1 Q Would you please look through the list of duties and
2 responsibilities listed on this job description and tell us if
3 any of them reference a duty and responsibility that would
4 involve the Ice Cream Maker II working with Mechanics?

5 A They both have a joint responsibility to makes sure of the
6 safe production of the highest quality ice cream products is
7 possible. It is the last sentence in the first paragraph,
8 2.1.3, troubleshoot safe conditions and take appropriate levels
9 of corrective action.

10 Q And how would that job duty and responsibility require an
11 Ice Cream Maker to work with a Mechanic?

12 A It is a joint venture, so it -- they are both -- safety is
13 Priority #1, so it is everyone's responsibility to make sure we
14 work safe, and any unsafe condition is identified and remedied
15 prior to the line starting up, or if the line is running, it is
16 remedied, and the line shuts down depending on the severity,
17 and we fix it right then.

18 So, Maintenance Mechanics see something or if an Ice Cream
19 Maker sees something, we bring it up to the supervisor.

20 HEARING OFFICER PALENCIA: To which supervisor?

21 THE WITNESS: It could be -- so the Production -- the Ice
22 Cream Maker would call the Production Supervisor. In some
23 cases, the Mechanic would call the Maintenance Supervisor, just
24 depending on what it is. So, if it is just like a -- for
25 example, a missing guard, the line doesn't start, or if the

1 line is running and the guard falls off, they immediately stop
2 and have to replace it.

3 HEARING OFFICER PALENCIA: So, in that example, how is the
4 Ice Cream Maker working with the Mechanic?

5 THE WITNESS: They are working in parallel, so if the
6 Mechanic saw it, he would tell the Ice Cream Maker, "Hey, your
7 guard is missing." The Ice Cream Maker would shut the line
8 down. One or the other would put it back on or fix it if it
9 was broken.

10 Q BY MR. BOBBER: Any other items on the job description?

11 A Participate, that is 2.2.8 - actively participate in NCE
12 initiatives.

13 Q Explain how does that implicate working -- an Ice Cream
14 Maker II working with a Maintenance Mechanic?

15 A So, on our pilot line, Line 16, AM - Autonomous
16 Maintenance days, when they have their meetings in the morning,
17 they review all of the defect tags, talk about the tasks for
18 the CIL, clean, inspect, and lubricate activities that the Ice
19 Cream Makers are going to do, and then the Mechanics are out
20 there and the line is doing PM's while the Ice Cream Makers are
21 doing their CIL's and the defect tags that they can do, and it
22 is all around equipment ownership, so they are all working
23 together.

24 Q Okay, any others? Any other references on the job
25 description?

1 A Assist in root cause investigations; that is 2.4.1.4.
2 Maintenance and Production always work together in trying to
3 find out the root cause of a breakdown. Anything that stopped
4 the line, high waste; things like that, they definitely work
5 together to try to understand what the issue is so that we can
6 eliminate it once and for all.

7 HEARING OFFICER PALENCIA: Can you provide me with an
8 example?

9 THE WITNESS: Yeah, so filler on a Rollo line; filler --
10 we are running different flavors and we are trying to -- we are
11 running a red flavor, say, red, a lemon-colored flavor, and a -
12 - so strawberry, lemon, and raspberry. The colors are bleeding
13 over into the lemon bar, which is not acceptable, so the Ice
14 Cream Maker and Production Techs work together to try to figure
15 out what the issue was. There were several steps in that,
16 starting with the temperature of the mix going into the filler,
17 continuing into the speed of the stroke of the filler, down and
18 up, continuing with the programming itself of the filler start
19 and stop time.

20 HEARING OFFICER PALENCIA: And what I am trying to get,
21 work together, you use the phrase work together. What is to
22 work together mean?

23 THE WITNESS: Okay, so --

24 HEARING OFFICER PALENCIA: What do they do that they work
25 together?

1 THE WITNESS: So, in this case, the -- the Ice Cream Maker
2 and the Mechanic, they collaborate on what is your mix
3 temperature, so the Ice Cream Maker says, "This is my mix
4 temperature," so the Mechanic says, "Well, okay, then that is
5 cold enough. That is the right temperature. What is the next
6 thing we can look at?" They both go up and they will look at
7 the start time of the stroke and the speed of the stroke, to
8 see how -- if it is starting soon enough, so it can have a nice
9 smooth long stroke, versus a fast shot which then causes the
10 mix to splash out of the pockets and make sure that is set up
11 correctly. That is something that they would both verify
12 together.

13 This one example, the -- we actually went into the program
14 and found that the start time was too late, so the table is
15 indexing. Every time the end of the table stops, it fills the
16 pocket. The -- once the table stops, the filler should be
17 filling, and there was a delay.

18 HEARING OFFICER PALENCIA: So, you example, you have a
19 Production and Maintenance employee talking about the problem.

20 THE WITNESS: Uh-huh, and the resolution.

21 HEARING OFFICER PALENCIA: Okay, and how often does that
22 occur in a given week? Is that a conversation with regards to
23 -- you are doing a root cause investigation where you have a
24 Production employee and a Maintenance employee, talking to --

25 THE WITNESS: That happens every shift.

1 Q BY MR. BOBBER: So, moving past 2.4.1.4, are there any
2 other entries on the job description that reflect duties and
3 responsibilities of the Ice Cream Maker II that would involve
4 that employee working with Maintenance?

5 A 2.4.4.1, understand and troubleshoot ice cream freezer
6 operations. Again, so that the Ice Cream Maker has to
7 understand how the ice cream freezer works, and what
8 adjustments to make to correct the mix, whether it is too cold
9 or too warm, not -- not enough air, not enough flow, if it
10 kicks off, high barrel pressure, for example, call Maintenance
11 over, try to understand what happened. Sometimes they will
12 have the Ice Cream Makers pull the barrel, pull the dasher out,
13 and after they pull the dasher out, the Mechanics will inspect
14 the blades to make sure they are not dull. Other times, it is
15 as simple as hot gassing the freezer, which means thawing it
16 out and restarting it, and flushing all of the air out of the
17 system, so they both -- again, they both work pretty close with
18 that.

19 Q Any others?

20 A Operating ingredient feeders, fruit feeders, sauce pumps,
21 shakers, etc., that is 2.4.5.3. Fruit feeders, for example,
22 are something that we have had quite a bit of trouble with.
23 What they do is add --

24 MR. STERN: I have got to object. We are getting these
25 lengthy technical things in response to no question whatsoever.

1 The question each time was to identify the task that both of
2 these men work on, and we are getting the history of the world
3 on every question. This is ridiculous.

4 We are wasting time, we are muddying up the record. We
5 are not getting anything specific.

6 Please, I beg you Madam Hearing Officer, control this
7 witness and have him answer the questions.

8 HEARING OFFICER PALENCIA: Okay. We want to make sure
9 that we identify the areas where they are working together, but
10 I think it is also important to get information of how they are
11 working together.

12 MR. STERN: I agree, but we are not.

13 MR. BOBBER: Yes, ma'am, and I think we are -- on this job
14 description, we are probably on the fourth or fifth item, and
15 clearly, the pattern of Q&A is, "Would you describe it -- would
16 you identify if there is an example," and the witness does, and
17 the follow-up question is, "Well, explain to us how that
18 implicates working with Maintenance," and in this instance,
19 Counsel got very upset because the witness went into the answer
20 of the second question before it was asked.

21 I am happy to interrupt him and ask the question.

22 HEARING OFFICER PALENCIA: What we will do is, if it is
23 just a yes or no --

24 THE WITNESS: Okay.

25 HEARING OFFICER PALENCIA: And your employer's counsel can

1 just go ahead and follow up.

2 THE WITNESS: Okay.

3 MR. BOBBER: Yes, I -- I thought that other approach
4 actually was quicker and more efficient than the objecting
5 approach, but we -- I am very happy to do it.

6 Q BY MR. BOBBER: So, let's pick up on that line item that
7 you referenced, 2.4.5.3, as part of the job description. How
8 does that particular duty and responsibility require the Ice
9 Cream Maker II to work with a Maintenance Mechanic?

10 A So, with the fruit feeders, it -- what the fruit feeders
11 do, they add ingredients to the ice cream. When they get
12 clogged up, when the blender pump isn't running at the correct
13 speed because of leaks or some other issue, they do collaborate
14 quite often to try to figure out what is happening with that.

15 During cleaning, the Ice Cream Maker's take apart the
16 fruit feeder. If there is any wear on the lamellas, which are
17 the scraper blades, they will call a Maintenance Tech over,
18 they will call Quality over, and they will understand what
19 happened, when the last time the lamellas were changed, and
20 then, in some cases, create a PSI which is a Product Safety
21 Investigation, which then leads to a root cause, finding the
22 root cause.

23 Q After 2.4.5.3 on the job description, are there any other
24 described duties and responsibilities of the Ice Cream Maker II
25 that require the employee to work with the Maintenance

1 Mechanic?

2 A Yes, 2.5.2, CIP.

3 Q And what is CIP, sir?

4 A CIP is clean-in-place.

5 Q How does that require the Ice Cream Maker II to work with
6 a Maintenance Mechanic?

7 A Typically, that is when the Ice Cream Makers tear apart
8 all of the equipment to clean it. Clean, sanitize, replace O-
9 rings, gaskets, seals, all of that kind of stuff, and if there
10 is damage, Maintenance will exchange the part or fix the part
11 themselves, or take it to the machine shop to get it cleaned
12 up, so the Ice Cream Makers can reinstall it.

13 Q And how would the Maintenance Mechanic learn that that is
14 needed?

15 A Typically, the Ice Cream Makers that are taking the
16 equipment apart, they do it so often and are so intimate with
17 that piece of equipment, that they will know when there is a
18 problem with a part. Typically, though, it doesn't look right,
19 they are smashed, it is worn, it is broken in half, it is in
20 pieces, or something to that effect, so the Mechanic will
21 sometimes go on what the Ice Cream Maker says as to what repair
22 to make.

23 Q Any other line items in the duties and responsibilities of
24 the Ice Cream Maker II that require the employee to work with a
25 Maintenance Mechanic?

1 A Just 2.6, basic maintenance.

2 Q And how so?

3 A The Ice Cream Maker -- the Maintenance Mechanic will teach
4 the Ice Cream Maker what to do, what to look for, what to
5 listen for, if something is going wrong, what to look for. So,
6 they teach them how to lubricate, change, looks and see if
7 chains are loose, see if the equipment is making a sound it
8 hasn't made before, they will teach them about those things.

9 Q And are your maintenance Mechanics who are assigned to the
10 production floor, are they instructed to provide that kind of
11 training to the Ice Cream Makers?

12 MR. STERN: Objection, leading.

13 HEARING OFFICER PALENCIA: Do you know if they are
14 instructed?

15 MR. STERN: It has got nothing to do -- it is leading;
16 never mind. I am not going to object anymore. Go ahead.

17 HEARING OFFICER PALENCIA: Okay, do you know if they are
18 instructed?

19 THE WITNESS: Mechanics aren't typically told to go teach
20 that person how to do that. The Ice Cream Maker will call a
21 Mechanic over and the Mechanic will take the time to explain it
22 to him.

23 HEARING OFFICER PALENCIA: Are you done with Employer's
24 Exhibit No. 6?

25 MR. BOBBER: Yes, ma'am.

1 HEARING OFFICER PALENCIA: On Employer's Exhibit No. 6,
2 you have had an opportunity to review this document?

3 THE WITNESS: Yes.

4 HEARING OFFICER PALENCIA: And you -- Employer's Exhibit
5 No. 6 under general description, is that an accurate general
6 description of the Ice Cream Maker's job?

7 THE WITNESS: Yes, I would say it is.

8 HEARING OFFICER PALENCIA: And under No. 2, there is a
9 description of duties and responsibilities. Based on your
10 experience and knowledge, would you say that is an accurate
11 description of duties and responsibilities for the Ice Cream
12 Maker II?

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: Thank you.

15 Q BY MR. BOBBER: Mr. Beyeler, would you look at the
16 Employer's Exhibit No. 5 document, please? This is identified
17 in the record as the Ice Cream Maker I job description.

18 A Okay.

19 Q And let me pick up with the very same questions that the
20 Hearing Officer asked you with respect to Employer's Exhibit
21 No. 6, does this Employer's Exhibit No. 5 state the general
22 function of an Ice Cream Maker I?

23 A Yes.

24 Q And in terms of major duties and responsibilities, are
25 those listed here in Employer's Exhibit No. 5 an accurate

1 statement of the major duties and responsibilities of an Ice
2 Cream Maker I?

3 A Yes.

4 Q Do any of those major duties and responsibilities listed
5 on Employer's Exhibit No. 5 involve duties and responsibilities
6 that require the Ice Cream Maker I to work with a Maintenance
7 Mechanic?

8 A Yeah, generally speaking 2.4.

9 Q And how does that one require?

10 A Work as part of the team to achieve goals; meet standards
11 for efficiency, quality and safety. To achieve our goals and
12 standards for efficiency, the line has to run, you know, 85, 95
13 percent efficient. In order to do that, Production Ice Cream
14 Maker I's and Maintenance work together to make sure the
15 equipment is ready to run, and if there are any issues, the Ice
16 Cream Maker I will call Maintenance, as well.

17 Q Any of the other listed major duties and responsibilities
18 require an Ice Cream Maker I to work with Maintenance?

19 A 2.9.

20 Q And how does that one require it?

21 A Participate in NCE initiatives, so AM day, defect tagging,
22 repairing defect tags, asking for help to repair those, or to
23 fix those if needed, CIL's.

24 HEARING OFFICER PALENCIA: And you said on what date?

25 THE WITNESS: AM Day. Autonomous Maintenance; that is

1 part of our NCE Program.

2 HEARING OFFICER PALENCIA: And to prepare tags, you say?

3 THE WITNESS: Defect tags; defect tags are part of our AM
4 program, so --

5 HEARING OFFICER PALENCIA: And can you explain to me what
6 an Ice Cream Maker I doing in preparing the tag?

7 THE WITNESS: They will put tags on a piece of equipment
8 that they see defects on, so if there is a missing bolt or a
9 loose handle or something like that, they will write it up on a
10 tag, attach the tag to that piece of equipment, and then log it
11 into a spreadsheet. So, then, on AM day, or we try to do them
12 every night, actually, to get all of these defect tags knocked
13 out.

14 HEARING OFFICER PALENCIA: And what is the Maintenance
15 employee's role in AM day?

16 THE WITNESS: In AM day, the Maintenance -- they are doing
17 their preventative maintenance, keeping the equipment in like-
18 new condition while the Ice Cream Makers are doing the AM
19 activity.

20 HEARING OFFICER PALENCIA: Is there any interaction
21 happening?

22 THE WITNESS: Absolutely, yes.

23 HEARING OFFICER PALENCIA: The type?

24 THE WITNESS: They meet -- there is an AM meeting before
25 they go out and do their activities. They talk about the

1 defect tags, what backlog they have in defect tags, what can
2 the Ice Cream Makers do, what are the Mechanics out to do --

3 HEARING OFFICER PALENCIA: And this AM meeting, is that
4 attended by both Production employees and Maintenance
5 employees?

6 THE WITNESS: Yes.

7 HEARING OFFICER PALENCIA: One Production employee, more
8 than one?

9 THE WITNESS: It is the entire line.

10 HEARING OFFICER PALENCIA: Okay.

11 Q BY MR. BOBBER: Mr. Beyeler, are there any other listed
12 major job duties and responsibilities seen on this Employer's
13 Exhibit No. 5 that demonstrate activities that require the Ice
14 Cream Maker I to work with Maintenance Mechanics?

15 A No.

16 Q What does this 2.11 perform sanitation as required --
17 please explain to us how an Ice Cream Maker I performs the
18 major job duty and responsibility of performing sanitation as
19 required?

20 A So, when a line goes down and it needs to be cleaned and
21 sanitized, disassembled and reassembled, again, if there are
22 any issues that they find, parts that are out of spec, broken,
23 worn, they will call a maintenance Mechanic over to help fix
24 it. Also, after sanitation is complete, pre-flight the line to
25 start it up, so Maintenance would be part of that.

1 HEARING OFFICER PALENCIA: And when you said -- do they go
2 in person, make a phone call; what do they do?

3 THE WITNESS: It depends. Typically the Mechanics are on
4 the floor and if they see one, they will just go get him. If
5 not, then they will page him on the PA system.

6 HEARING OFFICER PALENCIA: And once they get him, what
7 happens?

8 THE WITNESS: They would take him to the issue, show them
9 the issue with the part. Say, if it was a worn part, they
10 would show it to him and explain to him what they found, and
11 then -- from that point, they would both investigate it and
12 look closer at the machine to find out what is wrong, why is it
13 worn, or in some cases, the Mechanic may just go get another
14 part or have that part fixed.

15 Q BY MR. BOBBER: Would you please turn your attention to
16 the document marked as Exhibit 7, which was identified in the
17 record as a job description for the Mix Maker job; do you see
18 that?

19 A Yes.

20 Q Would you look through the description of duties and
21 responsibilities on Pages 1 through 3, and then tell us when
22 you are done, if that is an accurate statement of the duties
23 and responsibilities of the Mix Maker position?

24 [Long pause.]

25 A Yes, that is accurate.

1 Q Are there any listed duties and responsibilities of the
2 Mix Maker that require the employee in that job to work with a
3 Maintenance Mechanic?

4 A Yes, there are some.

5 Q What is the first one you see, from the beginning of the
6 document?

7 A Complete -- it is on Page 2, the very top item. Complete
8 master sanitation duties, as follows.

9 Q And how does that particular job duty and responsibility
10 require the Mix Maker to work with a Maintenance Mechanic?

11 A Not so much the valve maintenance or pump maintenance, but
12 pump rebuilds. The pumps are pretty tricky and they would
13 consult with a Maintenance Tech to make sure that they rebuilt
14 it correctly, prior to putting back in operation.

15 HEARING OFFICER PALENCIA: Can you explain to me about
16 consult? What does that entail?

17 THE WITNESS: So, "Can you double check it for me?" So,
18 "I rebuilt this pump and can you just double check it for me
19 before I put it back in service?"

20 HEARING OFFICER PALENCIA: And when the Maintenance
21 employees checks that, what does that entail?

22 THE WITNESS: Inspection; make sure that the spring is in
23 the right place, the pressure plate is in the right place, and
24 things like that.

25 Q BY MR. BOBBER: Any other such items on this list of

1 duties and responsibilities?

2 A Yes.

3 Q What is the next one that you see?

4 A It is troubleshooting mix batching, valves, pumps and all
5 out of spec mix.

6 Q And would you describe to us how that job duty and
7 responsibility requires the work with a Maintenance Mechanic?

8 A Mix batching, when the mix is batched, it goes through our
9 HTST system, and when there is problems with any of the --
10 anything on the HTST system or the bypass valve on the HT -- at
11 the HTST discharge, that will cause issues with batching, and
12 then the Maintenance Mechanic would be called to come over and
13 see what is going on with that unit. The HTST unit has seals
14 on it that are placed there by the State, and the Maintenance
15 Mechanics will go over there and look at those and troubleshoot
16 that issue.

17 Q Are there any other items that you see on this list of
18 duties and responsibilities that require the Mix Maker to work
19 with a Maintenance Mechanic?

20 A Yes.

21 Q What is the next one that you see?

22 A It is five up from the bottom on Page 2, "Work closely
23 with the State Inspector and Process Tech to complete monthly
24 safety audits."

25 Q What is a Process Tech?

1 A Process Tech; that is the Maintenance group that supports
2 Mix-Making, Pre-Manufacturing process.

3 Q And how does that job duty and responsibility require the
4 Mix Maker to work with a Maintenance person?

5 A They go through the equipment as well as all of the mix-
6 making charts and CIP charts to make sure the time and
7 temperature and pressures were met, and meets the State's
8 requirements.

9 Q And that is a task that they perform together?

10 A Yes, sir.

11 HEARING OFFICER PALENCIA: Typically, how long does it
12 take for them to prepare these reports?

13 THE WITNESS: To do the audit?

14 HEARING OFFICER PALENCIA: Right.

15 THE WITNESS: So, typically the State Inspector is there
16 for anywhere from four to eight hours.

17 HEARING OFFICER PALENCIA: But how much time are the
18 Production workers working with the Maintenance employees to
19 complete the audit?

20 THE WITNESS: They will work with them until the audit is
21 complete.

22 HEARING OFFICER PALENCIA: The entire time?

23 THE WITNESS: Yes.

24 HEARING OFFICER PALENCIA: You are done with Employer's
25 Exhibit No. 7?

1 MR. BOBBER: Yes, ma'am.

2 HEARING OFFICER PALENCIA: I just want to make sure we
3 have got the abbreviations correct here, for somebody reading
4 this job description.

5 Page 1 of Employer's Exhibit No. 7, and I am not sure I
6 got this in the record, what is HTST refer to?

7 THE WITNESS: That is the homogenizer, High Temperature
8 Short Time; it is the homogenizer that pulverizes the mix and
9 removes all of the bacteria from the mix.

10 HEARING OFFICER PALENCIA: And what does BOD refer to?

11 THE WITNESS: Bio-oxygen Demand. That is the --

12 HEARING OFFICER PALENCIA: Okay.

13 And on Page 2, there is reference to hook up the -- what
14 are CIP pipes?

15 THE WITNESS: That is Clean-in-place. So, when you clean
16 in place, that requires configuration of hoses and pipes on
17 occasion that needs -- connections that need to take place.

18 HEARING OFFICER PALENCIA: Proceed.

19 Q BY MR. BOBBER: Mr. Beyeler, would you look at Employer's
20 Exhibit No. 8, which has been described in the record as a job
21 description for the Maintenance I position. Do you have a copy
22 of that in front of you?

23 A Yes.

24 Q Would you please look at the Section 2 entitled
25 Description of Duties and Responsibilities, and after you do

1 that, tell us if you consider that to be an accurate
2 description of the Maintenance I job duties and
3 responsibilities.

4 A Yes.

5 MR. BOBBER: I don't have any further questions on
6 direct.

7 HEARING OFFICER PALENCIA: Mr. Stern?

8 MR. STERN: Thank you.

9 **CROSS EXAMINATION**

10 Q BY MR. STERN: Now, please take a look at Company Exhibit
11 No. 7, specifically Page 2.

12 Now this is the job description for the Mix Maker,
13 correct?

14 A Correct.

15 Q You gave us lots of testimony about the fifth bullet point
16 from the bottom, work closely with State Inspector and Process
17 Tech to complete monthly audits.

18 Have you ever been physically present during the four
19 hours, or approximately four hours that that work was done?

20 A Not the whole time.

21 Q Okay, when is the last time you have been present for any
22 portion of that time?

23 A When I was Maintenance Manager last time.

24 Q How long ago was that?

25 A Eighteen months ago.

1 Q Okay, and eighteen months ago, how long did you spend
2 observing that process?

3 A About an hour.

4 Q So you don't know what they did after that time, correct?

5 A They give me a report --

6 Q The report tells you what?

7 A What they did.

8 Q What does that report say? We provided this information
9 to the Inspector and the Inspector agreed it was okay?

10 A It says we went and looked at this, we inspected that, we
11 inspected that.

12 Q Okay, so what is the purpose of having the Mixer go along
13 with the Inspector?

14 A To validate or verify any issues they may have had during
15 the mix-making process.

16 Q Now the Mixer has a different set of skills from the
17 Maintenance people, correct?

18 A Somewhat.

19 Q Only somewhat. Okay, good. That is your testimony, only
20 somewhat of a difference in skills? That is your testimony?
21 Really, good.

22 Okay, take a look at --

23 MR. BOBBER: Objection.

24 Q BY MR. STERN: -- Employer's Exhibit No. 8.

25 MR. BOBBER: A little hostile towards the witness. The

1 witness can give his best truthful answers, and I don't think
2 we need Counsel sarcastically knocking him for those. We can
3 make arguments in the brief.

4 HEARING OFFICER PALENCIA: Let's just go ahead and stick
5 with the questions and --

6 Q BY MR. STERN: That's fine, Company Exhibit 8. In the job
7 qualifications --

8 HEARING OFFICER PALENCIA: Do you have Employer's Exhibit
9 No. 8?

10 THE WITNESS: Yes.

11 Q BY MR. STERN: Okay, I am not interested in the high
12 school degree because everybody has to have that, is that
13 correct?

14 A Correct.

15 Q And mostly, I am not interested in having to read English,
16 because all employees have to do that; is that correct?

17 A Correct.

18 Q Now, is there any Production classification which job
19 specification specifies that they have to be able to read and
20 follow blueprints?

21 A It states that on here.

22 Q Any Production and hourly employee, does that appear in
23 any job description that you are aware of?

24 A I am not sure.

25 Q How about the next one? Two years' experience in

1 troubleshooting pneumatics. Any Production hourly
2 classification have to have that?

3 A No.

4 Q How about hydraulics?

5 A No.

6 Q Electrical and Mechanical in manufacturing facilities?
7 The rest of that second bullet point?

8 A Oh, I don't know.

9 Q Okay, well, you had the job descriptions in front of you
10 and you testified that those are accurate, so are they in any
11 of those?

12 A I don't recall. Electrical, no. I don't recall seeing
13 Mechanical in a manufacturing facility experience.

14 Q Okay, let's take the next bullet point: One year
15 experience with computerized maintenance management system.
16 Does any Production employee have to have one year of
17 experience with the computerized maintenance management system?

18 A No.

19 Q And then, the last one, five to seven years of industrial
20 high speed maintenance experience, preferably in the food
21 industry. Any production classification have to have anywhere
22 near five years of that kind of experience to get a job?

23 A No.

24 Q Now, the Maintenance Mechanics are paid much more than
25 Production, correct?

1 MR. BOBBER: Objection to form; vague.

2 HEARING OFFICER PALENCIA: Overruled.

3 MR. STERN: Thank you.

4 Q BY MR. STERN: Isn't that true?

5 A They are paid more than Production people, correct.

6 Q And that is not by accident. That is in the Employer's
7 view, they bring a higher skill set; correct?

8 A They should, yes.

9 Q And in order to get that higher skill set, you have to pay
10 more, correct?:

11 A That's correct.

12 Q And you report to somebody, correct?

13 A Yes, that is correct.

14 Q And the person you report to wants you to use your staff
15 as efficiently as possible to get the job done, correct?

16 A Absolutely.

17 Q And he doesn't want you having the highest paid
18 classification performing the lowest duty, right?

19 A I --

20 Q I will withdraw the question.

21 Sometimes product has to be physically moved in the plant,
22 correct?

23 A Sure.

24 Q That means that someone has to pick it up and move it
25 right?

1 A Sure.

2 Q And normally, you don't have Maintenance guys do that,
3 correct?

4 A They help, on occasion.

5 Q That wasn't my question.

6 My question is that normally you don't have Maintenance
7 guys do that, right?

8 A Normally, no.

9 Q And one reason normally no, is because you are paying much
10 more than you would have to, to have a box moved because you
11 can get a much lower compensated employee to do that, right?

12 A I could.

13 Q So, you want to use the Maintenance employees to perform
14 tasks that take advantage of their higher skill set, correct?

15 A I am not sure I understand what you are saying.

16 Q All right. You gave us examples of Maintenance working
17 side by side with the Ice Cream Maker, and one of the things
18 you said, is that occasionally there is a problem with the
19 cartoner, and people would have to remove product off the
20 cartoner, stick it in the freezer, fix the problem, and then
21 they have to reload the cartoner. Did I get that right?

22 A They reintroduce the product, yes.

23 Q Okay, now when was the last time you personally saw a
24 Maintenance man reloading the cartoner?

25 A A month ago.

1 Q Okay, and what was his name?

2 A I am not sure which one it was.

3 Q And in the last year, how many times have you saw a
4 maintenance person do that?

5 A I would have to speculate.

6 Q Give us your best estimate.

7 A Probably four, five different occasions.

8 Q Four or five times in a year out of 113 Maintenance
9 people, correct?

10 A In the West Snacks Business Unit that I managed.

11 Q Okay. Now, what percentage of time are Maintenance hourly
12 employees performing tasks that are not listed on Employer's
13 Exhibit No. 8?

14 A Well, they have thirty minutes for lunch and two fifteen-
15 minute breaks, so that is an hour --

16 Q I am talking about during work time, sir. During -- what
17 percentage of the hourly Maintenance employees' work time is
18 spent performing duties not listed on Employer's Exhibit No. 8,
19 job description?

20 A That is hard to say. I mean, I can't -- I don't follow
21 them around and see what they are doing at all times of the
22 day. You know, I --

23 Q So you can't answer my question?

24 A I can't answer the question.

25 Q Okay, isn't it true that Maintenance hourly employees

1 spend the overwhelming majority of their time performing
2 functions listed on this job description, Employer's Exhibit
3 No. 8?

4 A Yes.

5 Q Like over ninety percent, right?

6 A Probably ninety percent.

7 Q Okay, you gave us a lot of testimony about Ice Cream Maker
8 and Ice Cream Mixers working side by side and working together
9 with the Maintenance people, but isn't the reality that the
10 Maintenance people fix broken machines except for minor
11 repairs?

12 A No.

13 Q Maintenance employees do not fix broken machines?

14 A They do.

15 Q And occasionally, you will have a Production employee make
16 a minor adjustment to a machine or perhaps a minor repair; is
17 that correct?

18 A That's correct.

19 Q But Production employees, if I heard you correctly, are
20 not responsible for replacing broken parts?

21 A Correct.

22 Q Because they don't have the skill to do that correctly,
23 for the most part?

24 A That's correct.

25 Q And Maintenance employees use power tools; is that

1 correct?

2 A Yes.

3 Q And according to your testimony, the Production employees,
4 the only tools they use are a wrench, screwdriver, and maybe a
5 mallet, right?

6 A That is what I said.

7 Q Was that not correct what you said before?

8 A They do use a pneumatic socket, wrench, when they are
9 doing bolts on the [indiscernible]; I left that out.

10 Q Okay. But the Maintenance employees use a variety of
11 power tools including fabrication machines, correct?

12 A The Machine Shop Techs do; fabrication.

13 Q You talked about the annual shutdown, and you said that all
14 of the Maintenance employees work during the shutdown; is that
15 correct?

16 A Yes.

17 Q And that a maximum of twelve Production employees may do
18 some work during that period; is that correct, approximately?

19 A It could be ten, twelve, yes.

20 Q Maybe even thirteen?

21 A Maybe even six, yeah.

22 Q Okay, and the procedure according to your testimony for a
23 Production employee to be able to work during the shutdown
24 period is they have to sign up on a list, meaning they have to
25 volunteer for that work; is that correct?

1 A Yes.

2 Q But Maintenance employees don't have that option because
3 according to your testimony, all Maintenance employees have to
4 work during the shutdown, right?

5 A Yes.

6 Q Now, you are personally aware that before you get a job as
7 a Maintenance employee at your company, you have to take a
8 written test, right?

9 A An assessment.

10 Q And what is that assessing?

11 A Your skill level.

12 Q Your skill at what?

13 A Electrical, PLC's, and Mechanical.

14 Q And is the same test given to Production employee
15 applicants?

16 A No.

17 Q Never, correct?

18 A Not that assessment.

19 Q Is there a different assessment, written assessment given
20 to Production applicants?

21 A Yes, there is.

22 Q And the reason they are different is because the jobs are
23 different, right?

24 A Yes.

25 Q How many Maintenance employees are typically assigned to

1 Pilot Line 16?

2 A For the AM activities, there is one per shift.

3 Q So -- on the second shift, is there one?

4 A Yes, one per shift, one on first, one on second, and one
5 on third, yes.

6 HEARING OFFICER PALENCIA: Off the record.

7 (Off the record.)

8 HEARING OFFICER PALENCIA: Okay, we are going to close for
9 today and resume tomorrow. We are not going to open at a
10 regular time. We are going to meet around 10:30 or 11:00, as
11 soon as Mr. Stern gets here since he has other commitments.

12 (Off the record.)

13 (Whereupon, the hearing was adjourned to Friday, October
14 28, 2011.)

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

<hr/>)	
In the Matter of:)	
)	
NESTLE-DREYER'S ICE CREAM, INC.)	
)	
Employer,)	
)	
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 501,)	Case: 31-RC-66625
)	
Petitioner.)	
<hr/>)	

The above-entitled matter came on for further hearing pursuant to adjournment before, **Hearing Officer, Yaneth Palencia**, at the National Labor Relations Board, 1150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824 on Friday, October 28, 2011, at 10:35 a.m.

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4	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u> <u>CRT EXAM</u>
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	<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
1			
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4			
5	None entered		

1 P R O C E E D I N G S

2 HEARING OFFICER PALENCIA: Mr. Stern? Do you have any more
3 questions?

4 MR. STERN: Yeah, just a couple.

5 CROSS EXAMINATION CONTINUES

6 Q BY MR. STERN: I think we've already covered the
7 maintenance employees are responsible for providing their own
8 tools, is that correct?

9 A Correct.

10 Q And the average maintenance employee in your department
11 has a large amount of personal tools, is that generally true?

12 A Yes.

13 Q And you work as a maintenance mechanic, correct?

14 A Yes.

15 Q And at that the time you worked as a maintenance mechanic,
16 was that the same system, you had to provide your own tools?

17 A Correct.

18 Q And can you give me an estimate as to the average value of
19 the tools that the average maintenance man in your department
20 brings to work?

21 A For tools, somewhere in the area of \$300 to \$500.

22 Q So the average maintenance employee in your department
23 only has \$300 to \$500 worth of tools?

24 A Some a little more, some a little less, but yes.

25 Q And most, if not all of them, bring their own roll up

1 toolboxes, correct?

2 A Correct.

3 Q And do you know what those cost?

4 A Depending on the size. There are so many different sizes.

5 Q Can you give me a range?

6 A From, anywhere from \$400 to the extravagant ones are, I
7 haven't costed them, but probably around \$2,500.

8 Q And can you give us examples of the types of tools that
9 maintenance employees typically provide?

10 A Socket sets, standard and metric, combination wrenches,
11 standard and metric, screwdrivers, Phillips and flat head,
12 hammers, mallets, nut drivers.

13 Q What's a nut driver?

14 A It's a, it's like a hand held, it looks like a
15 screwdriver, but on the end it has a hex head on it so you can
16 tighten bolts or nuts with it.

17 Q Is that a power tool?

18 A No, it's a hand, hand held.

19 Q What other kind of tools do maintenance mechanics
20 typically provide?

21 A Some have impact wrenches or impact guns, which are
22 pneumatic, typically. Some have pneumatic socket wrenches,
23 chain breakers, it's a tool to break chains with, another tool
24 to, I forget what it's called, but it brings the chain
25 together, so you can put the master link in.

1 Q About things like screw guns, electric drills?

2 A We have been providing drills for the different
3 maintenance shops, the Milwaukee drills, like a cordless drill.

4 Q But do the mechanics generally own their own their tools,
5 their own electric drills?

6 A Some do.

7 Q Okay. Now most of, there is a range of the cost of tools,
8 depending upon the quality of the tools and the manufacturer.

9 A Absolutely.

10 Q Is that correct?

11 A Yes.

12 Q And you can buy a real cheap socket set for \$20-\$30, is
13 that correct, something like that, maybe \$50?

14 A Well, we, a small set for \$50? Yes, probably a Craftsman.

15 Q But typically the mechanics that work for you use the
16 higher quality tools because they last longer, right?

17 A It's a Craftsman all the way up to Proto, so, we do not
18 allow them to use anything less than Craftsman, just because of
19 the, for safety reasons.

20 Q Right. The nuts can get rounded off if you use inferior
21 tools, things like that?

22 A Or the tool will break or bend.

23 Q Right.

24 A Or bend, yeah.

25 Q Okay. So for a quality socket set, both in metric and

1 standard, what would you estimate that cost or the range?

2 A Depending on the size. It could be anywhere from, maybe
3 \$50 to \$150.

4 Q So your testimony is you can get both a standard and
5 metric quality socket set from between \$50 to \$150?

6 A Depending on the range of sizes, I believe so.

7 Q And if you got a higher quality socket set, the price
8 could be much more than that, correct?

9 A Absolutely, yes.

10 Q It could be like \$400, correct?

11 A I don't know. Proto's are very expensive, but it could
12 be, I think, I'm not sure.

13 Q Okay. And lots of the mechanics that work for you have
14 those more expensive tools, correct? Like the Proto, for
15 example?

16 A I wouldn't say most of them, some have Proto's, some have
17 Craftsman.

18 Q Okay. And don't you think your estimate of about \$400 on
19 average is low, especially if you include the toolbox, which by
20 itself, under your estimate, costs a minimum of \$400, correct?

21 A Well, you asked me about the tool, just for tools, so for
22 tools it could be that range. For the toolbox, that's an
23 additional cost.

24 Q Well all of the mechanics provide their own toolbox,
25 right? I mean, they don't show up with a bag of tools, do

1 they?

2 A Yes, they all provide their own toolbox, yes. Or they use
3 the tool allowance to buy one.

4 Q What's a quality impact one cost?

5 A You know, I have never priced one, I've never owned one
6 myself, I don't know.

7 Q It would be at least \$200 wouldn't it?

8 A I don't know.

9 Q Okay. You gave us a lot of testimony yesterday about the
10 working relationship between the maintenance folks and the
11 mixer 1, the mixer 2 and, I'm sorry, the ice cream maker 1 and
12 2 and the mixer, correct?

13 A Yes.

14 Q And for the most part, those mixing classifications, the
15 ice cream maker 1 and 2, they are responsible for producing
16 product, is that right?

17 A The mix maker, they are responsible for making mix,
18 correct.

19 Q And the same thing with the ice cream maker 1 and 2,
20 they're primary responsibility is just to make product?

21 A Yes.

22 Q And maintenance mechanic's primary responsibility is to
23 keep the equipment running, not to be making product, right?

24 A Primarily, yes.

25 Q Okay. And the working relationship between the

1 maintenance department employees and the hourly production
2 employees is that production employees will inform maintenance
3 when there is a problem, is that true so far?

4 A Depending on the severity of the problem, so --

5 Q Right.

6 A Yeah.

7 Q So if there is a minor problem, a routine problem, a
8 machine is jammed or something like that, the hourly production
9 employees may be able to fix that all on their own, and they do
10 that?

11 A Correct.

12 Q But sometimes it's more complicated, goes beyond their
13 skill level and that's when they have to call the maintenance
14 folks in your department, right?

15 A Correct.

16 Q And then when the maintenance employee goes over to the
17 area of the problem where the production employees are,
18 production employees might have a conversation with them where
19 they will explain the problem they are having, is that true so
20 far?

21 A Yes.

22 Q They might also say we tried to do A, B and C to fix it,
23 but it's still broke, something like that?

24 A Yes.

25 Q Okay. And they might even sit there and watch the

1 maintenance people make the repair so they can learn more about
2 the equipment?

3 A Yes.

4 Q And maybe next time if it's a minor repair, they can
5 handle it themselves, is that correct?

6 A Yes.

7 Q Yesterday you gave me an estimate that approximately 90
8 percent of the average maintenance hourly employee's time is
9 spent performing duties listed on the job description, which is
10 in evidence as Employer's 6, I'm sorry, Employer's 8, is that
11 correct?

12 A I believe I said approximately, yes.

13 Q And does the Employer keep records of occasions when
14 maintenance mechanics perform non-maintenance duties?

15 A When they perform non-maintenance duties, no.

16 Q And how much, what percentage of an average week for you
17 do you spend in the production area?

18 A On the floor, probably an hour a day.

19 Q Is there a particular hour that you like to be out on the
20 floor? Is it in the morning, the afternoon?

21 A Typically I'll go out in the morning for a little while
22 and then again in the afternoon, walk through.

23 Q Back to the tools and including the toolbox, what do you
24 think the highest dollar value of tools that any maintenance
25 employee in your department provides for work?

1 A Including the toolbox?

2 Q Including everything. It's thousands of dollars, isn't
3 it?

4 A Yeah, it's hard to say.

5 Q Could be between \$5 and \$10,000?

6 A I'm not sure, but it's --

7 Q Does that sound like a fair range though, \$5-to-\$10,000?

8 A \$5,000 is pretty significant, yeah.

9 Q So you think \$5,000 is a fair estimate?

10 A I believe so.

11 Q Okay.

12 MR. STERN: Thank you, nothing further.

13 HEARING OFFICER PALENCIA: Mr. Bobber?

14 MR. BOBBER: One moment please, I was going to give you
15 your turn.

16 HEARING OFFICER PALENCIA: Oh no, no, no, let's go off the
17 record. You want me, I have, let's go off the record. My
18 questions are not in this area, so let's go off the record.

19 **(Off the record)**

20 **COURT EXAMINATION**

21 Q BY HEARING OFFICER PALENCIA: I just have a few questions.
22 Some of them might be already asked and answered.

23 A Okay.

24 Q I believe there was earlier testimony that production
25 employees, their work schedule is different from maintenance

1 employees, is that correct?

2 A Yeah, some of the times are not aligned perfectly.

3 Q Do production employees, they work the, is it eight hours
4 a day, five days a week?

5 A Production people do, well it's eight hours a day, it
6 could be six, seven days a week one week, and six days a week
7 next week. It just depends.

8 Q If they work overtime?

9 A Yes.

10 Q And then your maintenance people, they are working ten
11 hours a day?

12 A Correct.

13 Q And you've got a 24 hour operation?

14 A Correct.

15 Q I want to go over some of the, we, there was a lot of
16 discussion about maintenance employees and there were different
17 names used and I want to make sure I have them clear --

18 A Okay.

19 Q -- a complete understanding. Okay. There was testimony
20 in the utility group employees. These are maintenance
21 employees that basically maintain your boilers, this type of
22 utilities, correct?

23 A Air compressors, ammonia compressors, yes.

24 Q Okay. And then there was a reference to control techs.

25 Are these also utility employees?

1 A No. There is a control technician, a control specialist,
2 control technician. There is one in the utility department.

3 Q Is there, okay, there was testimony there were
4 approximately four, is that correct?

5 A Yes, there is four. There is three on the production
6 side, production, that support production in palletizing.
7 There is one that supports utilities, for the utilities group.

8 Q So the --

9 A And they can cross over, if needed, their help.

10 Q The one that supports the utility groups, where is that
11 employee most of the time working out of?

12 A In the utility office.

13 Q In the utility office?

14 A Correct.

15 Q Okay. And then your control tech, the other employees,
16 where are they working out of?

17 A There is three of them. They have an office above the
18 machine shop. Two of them are on first shift, one is on second
19 shift and they, but their office is up above the machine shop.

20 Q And where do they spend most of their time?

21 A Depending on activities or what's going on during the day,
22 it could be on production, it could be in palletizing,
23 production floor, on the lines, depending on what they are
24 working on or it could be in palletizing, working on.

25 Q That's if they are called to that particular place to

1 work?

2 A Yes and typically they have a backlog of work that they
3 need to do, so they are very rarely idle.

4 Q And there was a reference to a process tech or process
5 technicians?

6 A Uh-huh.

7 Q So are these, are these line mechanics?

8 A No. The process mechanics, process technicians --

9 Q Yes.

10 A They are mechanics, their responsibility is to support mix
11 making and getting mix to the production lines. The pipes and
12 controls, electrical controls and things like that.

13 Q And how is their work different from the line mechanics?

14 A The line mechanics support the production lines primarily,
15 where on a production, on a typical production line, you'd have
16 an ice cream freezer, a filler, a wrapper, a cartoner, a
17 bundler, a tape machine. They would support everything on that
18 production line or lines.

19 Q And about how many line mechanics do you have on a
20 particular shift, for a particular line?

21 A They are not assigned to lines. They are assigned by the
22 areas, so on a shift, for example, we may have six mechanics
23 for that area, for that shift. Some days it may be less.

24 Q Okay. And the area could cover anywhere from how many
25 lines?

1 A It could cover eight lines to, we have I think three
2 mechanics in DAP, which covers 30 through 35, lines 30 through
3 35.

4 Q And then you have your palletizing mechanics. These
5 people pretty much stay in that area, is that correct?

6 A In palletizing? For the most part, yes.

7 Q Okay. There was also reference to facility mechanics.

8 A Uh-huh.

9 Q And these are different than your utility people?

10 A Correct, yes.

11 Q What are your facility mechanics?

12 A Facility mechanics take care of the building, the alarm
13 system, they support the alarm system, the fire system, the
14 lighting, the plumbing, the grounds, keeping them clear and
15 clean and they do projects, like painting, hiring contractors
16 to do, resurface the parking lot, they do a lot of plumbing and
17 building things.

18 Q So it's fair to say that out of the maintenance employees,
19 the facility mechanics are not really working with your
20 production employees on a daily basis?

21 A Not so much, no.

22 Q Would there be any reason to work with your maintenance
23 employees?

24 A If you're coordinating projects, coordinating efforts --

25 Q Such as?

1 A We have, for example, we have a drain project going on
2 right now where the drains have to be scoped. They've hired a
3 plumber to bring in a camera on a long cable. Basically, you
4 put down the drain and you can see inside the drain for a
5 hundred feet, two hundred feet, whatever. So to coordinate
6 that activity when there is nothing running and no fluids,
7 liquids going down the drains, so the facility, people would
8 have to work with production, maintenance, mix making, to make
9 sure that we're not cleaning anything, we're not putting
10 anything down the drains while that activity --

11 Q When you say would be working, wouldn't they be talking to
12 the supervisor?

13 A So I would be talking to the supervisors, or actually to,
14 yeah, to the supervisors and to the business unit managers,
15 production manager to make sure hey, heads up, this is coming,
16 this is the project that we got going on, as well as
17 communicating to my supervisors and then the facility guys. We
18 have a Friday meeting that we talk about all the work going on
19 during the week and on the weekends, so all of that is
20 communicated.

21 Q Okay. There are three business units.

22 A Correct.

23 Q You've got your East (inaudible) business unit, also
24 referred to as East business unit, and then you've got your
25 West business unit and then you've got your DAP business unit.

1 And then, is palletizing, is that part of the DAP business
2 unit?

3 A No. Palletizing is primarily managed by one person.
4 She's a business unit manager. She manages the palletizing
5 people as well as the sanitation, the sanitation people.

6 Q But it's not considered a business unit cause you're not
7 making any product or --

8 A Her title is a business unit manager, so yeah, I mean, it
9 would be considered a business unit.

10 Q So that would be the fourth then, business unit if
11 anything?

12 A Yes.

13 Q Okay. Palletizing. But there's no maintenance people
14 working there, correct?

15 A Yes, yes.

16 Q Yes there aren't any or yes there are?

17 A Yes, there are.

18 Q There are working there?

19 A Maintenance, correct, oh yes, in palletizing for sure.

20 Q Sorry, but are there any production people working in
21 palletizing?

22 A Yes.

23 Q What are they doing in palletizing?

24 A They are stacking boxes on pallets, moving pallets, well,
25 the RDC people come and pick up the pallets with forklifts and

1 take them to the RDC cold storage. We also have a conveyor
2 that takes the pallets into our high rise that's located right
3 there next to palletizing, but the production people as the
4 cases come through the wall on conveyors, they, there are
5 several stacking stations where they grab the boxes, the cases
6 as they come by and they stack them on pallets.

7 Q And what are your maintenance, sorry, what are your
8 production people doing there?

9 A They are stacking the pallets on the, or the boxes on the
10 pallets.

11 Q How many production employees do you have working there in
12 any given shift?

13 A I would have to guess, I don't know off the top of my
14 head.

15 Q Have you ever been in that area?

16 A Oh yeah, oh yeah, plenty of times.

17 Q Plenty of times, and in the times that you've been there,
18 how many have you seen in a shift working?

19 A Just stacking and working in the, probably 12, 13 --

20 Q And how many maintenance --

21 A -- on a shift. In maintenance, there would be four or
22 five per shift.

23 Q Would they, do you know if they would be the entire shift
24 or they would just --

25 A Oh yes, yes.

1 Q They would be stacking boxes the entire shift?

2 A The production people, yes.

3 Q No, but what about the maintenance people?

4 A The maintenance folks, they are responsibility is to keep

5 the conveyors running. We have a control system, a PLC,

6 program logic control system, which is like a, it's a

7 processor, it's a, in basic terms, it's a computer that runs a

8 program that tells the equipment what to do and when to do it,

9 so also, our high rise is right there. The mechanics maintain

10 the high rise to make sure the retrieval systems are working

11 properly, cause they are automated, it automatically picks the

12 pallet up and it puts it up in the rack in a specific location.

13 Q I want to talk a little bit about, there was some talk

14 about a written test. And is it your testimony that

15 maintenance employees are required to take a written test?

16 A When the maintenance employees are hired, they take an

17 assessment.

18 Q And have you ever seen that assessment test?

19 A Uh-huh, yes.

20 Q Okay. And how long is the test?

21 A It's, I think it's four pages.

22 Q How long are you given -- its four pages --

23 A Front and back, I believe.

24 Q And what kind of questions are on that test?

25 A There are mechanical questions, electrical questions for

1 motors, there are some PLC questions.

2 Q What's PLC?

3 A Program for logic controller. So it asks about, excuse
4 me, it asks about ladder logic, which is the program for the
5 PLC, so if this switch was closed and this switch was closed,
6 what would happen to this indicator, something to that affect.
7 Just to see if the employee understands the thought process
8 along how the programming works.

9 Q And is it fair to say that would show you whether they've
10 had previous work experience or not.

11 A Yes.

12 Q And what about the production employees. I just want to
13 clarify, is there any written test that they have to take?

14 A There is an assessment that they do. I believe it's, you
15 know what, I know there is some math questions on it.

16 Q Have you ever seen the test yourself?

17 A I have not seen the test itself. I've seen it being
18 administered in the room, but I've never gone in and, I never
19 looked at it.

20 Q Okay.

21 A But I do hear the employees talking about it, there's
22 math, oh my gosh, you know.

23 Q It's a different test?

24 A Yes, yeah.

25 Q There was a reference to TAG, technical application group,

1 and this is a specific location at the facility, correct?

2 A It is attached to our building, correct.

3 Q It's attached to your building?

4 A Their building is, yeah.

5 Q Okay. And do you have maintenance employees working
6 there?

7 A I do not.

8 Q You don't?

9 A I do not.

10 Q Okay. Are there any production employees working there?

11 A Not that are tied to the plant, not, it's a separate
12 entity.

13 Q It's a separate --

14 A Yeah.

15 Q Okay.

16 A It has nothing to do with the plant personnel or anything.

17 Q Okay.

18 A Or management of the plant.

19 Q I want to talk a little bit about RETA certification.

20 A Uh-huh.

21 Q Okay. Do you know what RETA stands for?

22 A Oh, I should. It's refrigeration, engineering, I don't
23 recall. It's --

24 Q What is the test?

25 A The RETA certification, it's all about refrigeration,

1 ammonia compressors, oil stills, it's all about the theory of
2 anhydrous ammonia and about how, what the characteristics are
3 of ammonia and how it reacts under pressures and temperatures
4 and things like that.

5 Q Are you RETA certified?

6 A No.

7 Q Okay. Do you know what the process is to become
8 certified?

9 A There is a series of classes that you have to take and
10 then there is a test that you have to pass.

11 Q There was some discussion with regards to phones, was
12 these Nextel phones?

13 A Yes.

14 Q And who is given these phones?

15 A The phones are assigned to the different areas and the
16 phones are passed down from shift to shift.

17 Q And are these phones -- they're provided by the Employer?

18 A Yes.

19 Q And do production employees get these phones?

20 A No.

21 Q Maintenance employees get these phones?

22 A Yeah, there is a few per area, yeah, not all of them have
23 them, just a few per area, that they passed out.

24 Q And what's the purpose of having these phones?

25 A It's so, primarily the maintenance group leader or myself

1 or production folks can get a hold of a mechanic if they need
2 something, if something is wrong and we need to find somebody.
3 That's what we use them for.

4 Q Okay. Just a few more questions. Pre-flight --

5 A Uh-huh.

6 Q -- is this something at the beginning of every shift?

7 Okay.

8 COURT REPORTER: Was that a yes?

9 A Yes, I'm sorry, yes, sorry.

10 Q And there was some discussion about production employees
11 and maintenance employees being present during this pre-flight?

12 A Yes.

13 Q What is a production employee doing there, other than
14 standing there?

15 A The production people, they have everything loaded, for
16 example, cartons in the carton magazine, wrap on the wrapper,
17 boxes, or shrink wrap on the bundlers, things like that. We
18 run wrap through the seals, to make sure they are sealing.
19 Cartons through the cartoner to verify that they are gluing
20 properly. Every, to make, just basically to verify everything
21 is working before we start production, before we start filling
22 ice cream.

23 Q And do you have one, more than one maintenance person
24 there during the pre-flight?

25 A Typically, there could be one, there would be, typically,

1 not more than one, unless they had an issue that evening, that
2 something they were working on, but typically there are, so
3 there is one, could be shared between two lines, but there is
4 typically one there, yes.

5 Q And is it fair to say that a maintenance employee is there
6 to observe that everything is working properly?

7 A Yes.

8 Q And that if an issue comes up, then he --

9 A That they are right there --

10 Q -- or she is to fix it?

11 A -- and quick and get it done, yes.

12 Q Okay. Just a few more questions. Shutdown for
13 production, this is an annual shutdown.

14 A Uh-huh.

15 Q Some maintenance employees are selected to work, not all?

16 A No, all maintenance employees work during shutdown.

17 Q Okay.

18 A Yes.

19 Q Some production employees?

20 A There are some production employees and as I think back on
21 yesterday, as I was focused in on production and maintenance,
22 there are more than just production employees that have to work
23 or sign up to work and choose to work and there, so there is
24 more employees, it's not just maintenance and production.

25 There is dry warehouse that has to work because they do

1 inventory, their annual inventory. We still ship and the RDC
2 shipping continues 24 hours a day.

3 Q And how is a, what is the, how is, what is the selection
4 process for a production employee?

5 A I don't recall.

6 Q To be picked, to be selected to work for that period?

7 A I don't recall what the requirement, if we went by
8 seniority or not. I'm not sure.

9 Q Okay.

10 A Somebody else might be able to answer that.

11 Q But is there a process though that's used?

12 A Yes, there is some criteria that has to be met.

13 Q Do you know if there is a difference in the pay that a
14 production employee receives when they work during that period?

15 A No, there is not.

16 Q Okay. Do you have layoffs at your facility?

17 A We have a seasonal work force, which is our temporary
18 employees which is through VOLT, our temporary agency.

19 Q Do you ever have layoffs amongst your permanent employees?

20 A During the plant shutdown, when the plant is down for that
21 period, it might be two weeks, four weeks, the full-time
22 employees do not, the majority of them do not work during that
23 period.

24 HEARING OFFICER PALENCIA: Those are all of my questions.

25 And I had a note. The, I want to, the parties, they look at,

1 the Collective Bargaining Agreement, it's Employer's 11, can we
2 just get a stipulation that the handwritten notes, there are
3 handwritten notes on that, they are not part of the contract
4 and they were made by an unknown source?

5 MR. BOBBER: Agreed. Found that way in the files, but yes
6 ma'am.

7 MR. STERN: We're agreeing that we're not going to
8 consider the handwritten portions?

9 HEARING OFFICER PALENCIA: Right, we're not going to
10 consider them.

11 MR. STERN: That's fine with me.

12 HEARING OFFICER PALENCIA: And it's not a signed
13 Collective Bargaining Agreement, but the parties have agreed, I
14 mean, it's not a signed, there is no signature and I'm assuming
15 this is the best copy that you could have --

16 MR. BOBBER: Yes.

17 HEARING OFFICER PALENCIA: -- have found? Okay. Okay,
18 thank you. Mr. Stern, any questions?

19 **RECROSS EXAMINATION**

20 Q BY MR. STERN: Yeah, the tag unit, the TAG, you do research
21 and development there?

22 A It's, yes, yes.

23 Q Okay.

24 A It's actually RNB, but yes.

25 Q Okay.

1 A Yes.

2 Q And some other function is performed there, isn't there?

3 A Yes.

4 Q What?

5 A It's, there are product scientists there for product
6 development. They do mix testing on new products, a lot of RND
7 stuff and they have engineers that work over there that go to
8 different sites to support --

9 Q And they have some sort of equipment that allows them to
10 do their RND work, correct?

11 A Uh-huh, yes.

12 Q And the maintenance, the hourly maintenance department
13 employees, they repair and maintain that equipment, right?

14 A Correct.

15 Q So they have to go over to that building to do that,
16 right?

17 A They have their own mechanics. We don't share.

18 Q Okay. But are their mechanics under your supervision?

19 A No, no.

20 Q Are they part of the 113 number that was floated around?

21 A No.

22 Q How many mechanics do they have?

23 A I believe they have, I believe they have three.

24 Q And no maintenance hourly employee in your department
25 works on their equipment, ever?

1 A It's a separate building. It's a separate company,
2 basically. Not that I'm aware of, no, they don't, they aren't
3 assigned over there.

4 Q But what about, you also have building mechanics that are
5 responsible for taking care of the building, the air
6 conditioning, electric issues within a building, that sort of a
7 thing?

8 A Yes.

9 Q And do they maintain the TAG facility for those issues?
10 The maintenance employees in your department?

11 A The utilities department maintains their ammonia
12 refrigeration.

13 Q So there are hourly maintenance employees in your
14 department who perform work at the TAG building?

15 A I guess so, yes.

16 Q And there are no production employees in that number, I
17 forgot what number we had, 500 and something like that, none of
18 those production employees work there, correct?

19 A In the TAG building, no, no.

20 Q Right. Thank you sir, nothing further.

21 A Okay.

22 HEARING OFFICER PALENCIA: Mr. Bobber?

23 **REDIRECT EXAMINATION**

24 Q BY MR. BOBBER: Mr. Beyeler, last night in response to Mr.
25 Stern's questions, you talked about the maintenance 1 employees

1 performing an estimated 90 percent of their work time and the
2 duties and responsibilities that we see on the job description,
3 Exhibit 8, and I want to follow-up and ask you a question about
4 that.

5 A Okay.

6 Q Why is it that you don't require your maintenance 1
7 employees to be performing a hundred percent of their work
8 activities only in these duties and responsibilities that we
9 see on the job description?

10 A There is several things that, you know, come up during the
11 day where maintenance people, they help, they help wherever
12 they are needed. You know, we have a team philosophy where the
13 priority is, is to make a quality product, safe, and get that
14 product to our consumers and whatever it takes to do that,
15 everybody pitches in and helps, so there are times when, for
16 example, a mechanic is walking down the hall and sees a
17 production person carrying a, or dragging a trash can to a
18 dumpster, and they would stop and help and dump the trash can.

19 Q You've seen something like that happen?

20 A Absolutely, daily, absolutely, yes.

21 Q And as the maintenance department manager, is it
22 acceptable to you to have your maintenance mechanics performing
23 some work outside of their maintenance job description during
24 their work time?

25 A Yes, to help the, to help the production team as a unit,

1 absolutely. That's a safety issue, for example, with the trash
2 cans. It's a team lift, so, it's absolutely acceptable for the
3 mechanics to help them.

4 Q Okay. Nothing further.

5 **RECROSS EXAMINATION**

6 Q BY MR. STERN: How long does it typically take a
7 maintenance person to assist somebody dumping out a trash can?

8 A Fifteen seconds, 20 seconds.

9 Q It would be less than one percent of their average work
10 day, correct?

11 A Yeah, unless they got caught, you know on every single
12 line walking, as they are walking down the hallway, yes.

13 Q Okay. Now, maintenance mechanics will receive work
14 instructions from their supervisors on occasion, is that
15 correct?

16 A Correct.

17 Q And if I'm a maintenance mechanic and my supervisor orders
18 me to go repair a machine, and I see a bunch of production
19 employees moving a bunch of product and it's too heavy and I
20 really think they need help and I want to jump in and be a team
21 member, can I just ignore the machine I'm supposed to fix and
22 spend six hours of my day helping production or would that be
23 considered insubordination?

24 A It if was going to take an excessive amount of time like
25 that, they would have to talk to their supervisor to get

1 approval.

2 Q Thank you. Nothing further.

3 MR. BOBBER: Nothing.

4 HEARING OFFICER PALENCIA: I have nothing further. You
5 are excused.

6 (Witness excused)

7 HEARING OFFICER PALENCIA: Off the record.

8 (Off the record)

9 HEARING OFFICER PALENCIA: Okay. There is no more
10 witnesses. I just want to confirm, there are no unit scope
11 issues in this case that's, is that both parties agreed that
12 the unit should be limited to the Bakersfield facility only, is
13 that correct?

14 MR. STERN: Yes.

15 MR. BOBBER: Yes.

16 HEARING OFFICER PALENCIA: Okay. And really, the only
17 issue here is the composition of the unit, whether the
18 maintenance employees should be included in the unit, correct?

19 MR. STERN: Whether the production employees should be
20 included.

21 HEARING OFFICER PALENCIA: Sorry, production employees.

22 MR. STERN: Right. We agree on what we disagree on.

23 HEARING OFFICER PALENCIA: Yes. And it is your position,
24 it is the Employer's position that the unit sought by the
25 Petitioner is not an appropriate unit, is that correct, based

1 on community of interest and the Collective Bargaining
2 Agreement that you introduced?

3 MR. BOBBER: Yes ma'am.

4 HEARING OFFICER PALENCIA: And is it your position that
5 the community of interest is so close between the production
6 and maintenance employees that they must be, that the, that the
7 maintenance employees must be included in the unit?

8 MR. BOBBER: Production must be.

9 HEARING OFFICER PALENCIA: Production must be included in
10 the unit, sorry about that.

11 MR. BOBBER: Yes.

12 HEARING OFFICER PALENCIA: Okay. Board Exhibit 2 was a
13 stipulation that the parties agreed to. Any changes to the
14 position to the parties as outlined in that Board exhibit?

15 MR. STERN: Not for the Union.

16 MR. BOBBER: No.

17 HEARING OFFICER PALENCIA: Are the parties willing to
18 waive the filing of briefs?

19 MR. BOBBER: No, we prefer to file.

20 MR. STERN: Do you ever get a yes to that question from
21 anyone?

22 HEARING OFFICER PALENCIA: So briefs are then due by the
23 close of business, that's next Friday. Okay? And then any
24 motion for extension should be addressed in writing to the
25 Regional Director. The parties are hereby reminded that they

1 should request an expedited copy of the transcript from the
2 Court Reporter. Late receipt of the transcript will not be
3 grounds for an extension of time to file briefs, if you fail to
4 do so. Is there anything further?

5 MR. BOBBER: No.

6 MR. STERN: No, thank you for your time.

7 HEARING OFFICER PALENCIA: If there's nothing further, the
8 hearing will be closed. The hearing is now closed.

9 **(Whereupon, the hearing in the above-entitled matter was**
10 **closed)**

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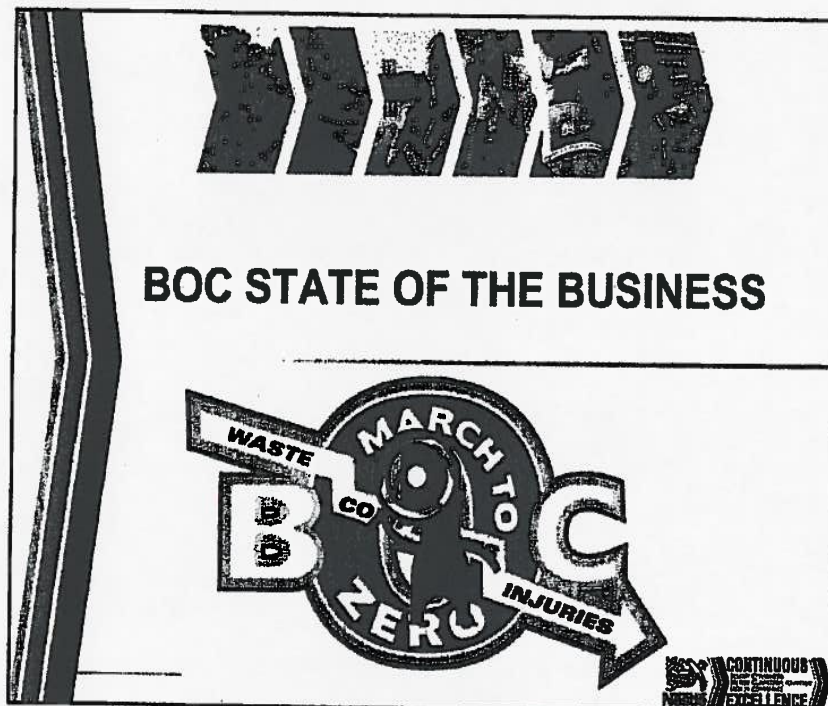
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How did BOC do in 2010?

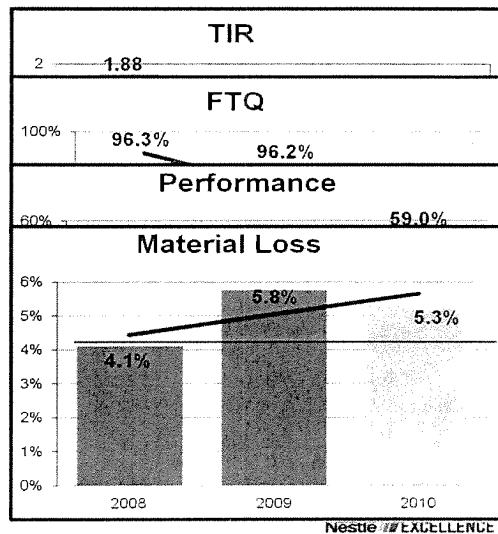
Efficiency	0.1%
Performance	
Consumer Complaints	
First Time Quality	
Environmental	
SVTP (\$M)	
Total Productivity (\$M)	
MUV Zbase (%)	5.3%
Bad Goods (\$M)	\$973
Order Fill	
Schedule Attainment	91.9%
TIR	
LTA	
Energy Usage -2% kWh/b	
Water -4% gal/b	0.5%
BOS	
NCE Progress (% plan)	
TEE	

YTD KPI results through October 2010

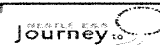


What about our Must Win Battles?

P	Through	Performance	58.0%
Q	Quality	First Time Quality	
C	Cost	MLV Base (%)	5.3%
D	Delivery		
S	Safety	TIR	1.3
M	Material		



-My Safety Commitment



1. Follow Rules (Standards)

- Learn and respect relevant local standards, rules and procedures
- Strictly follow rules, and always use the right procedure for the job
- Identify impractical rules and procedures, and promptly suggest improvements to superior or relevant person
- Display willingness to perform more than the basic job requirements for Safety & Health

2. Speak Up (Communication)

- Ask questions to gain clarification and understanding, listen to others' views and concerns
- Promptly report incidents, near-misses, unsafe conditions and error sources
- Express any Safety & Health concerns to superior or relevant person, including when unfit to work for any reason
- Challenge any unsafe behavior immediately
- If in doubt, put the job on hold, and warn those who may be in danger

3. Be Mindful (Risk Management)

- Stay vigilant, maintain continual awareness of hazards, surroundings and adjacent work, e.g. is equipment correctly guarded? are emergency doors/stairs accessible?
- Anticipate possible risks and problems; constantly ask "what could go wrong?"
- Take time to plan and organize necessary steps and resources to do the job safely, and keep the workplace tidy
- Avoid assumptions, verify and check understanding when unsure

4. Get Involved (Involvement)

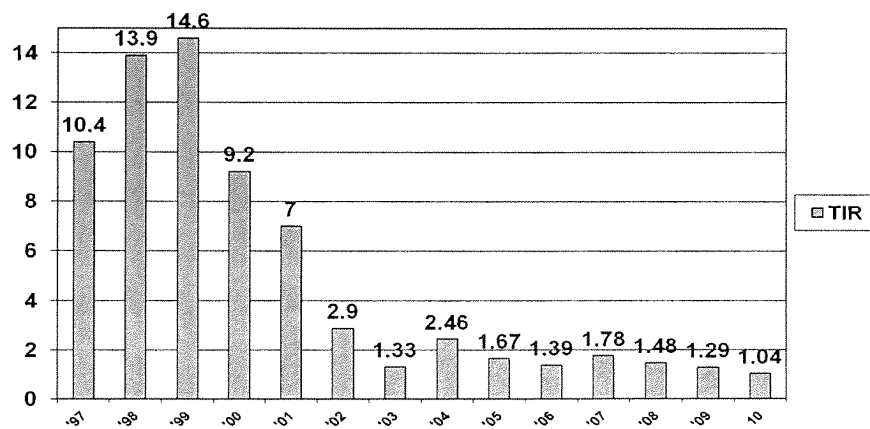
- Take responsibility for own safety and safety of co-workers, and support team Safety & Health standards
- Contribute to team Safety & Health discussions and meetings
- Participate in local programs or initiatives to improve Safety & Health performance
- Share personal Safety & Health knowledge and learning with others

To embed Safety & Health in our culture, I will not:

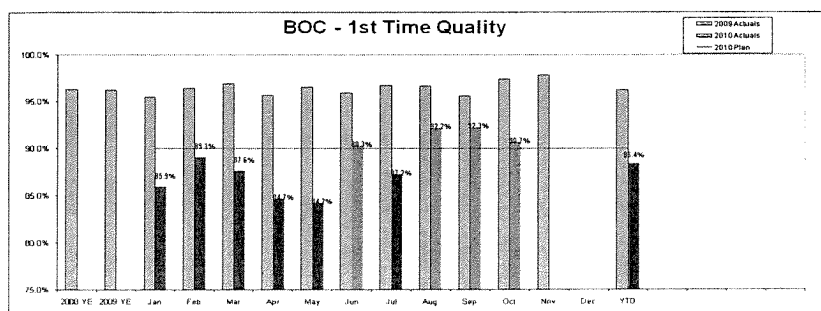
- Follow Rules (Standards)**
 - Ignore rules and procedures; e.g. by cutting corners, skipping steps, not wearing full protection, not wearing seat belt
 - Fail to consider the implications of not following a procedure
 - Rush to get the job done without carrying out the full procedural steps
 - Fail to seek approval or advice if the plan changes or deviates
- Speak Up (Communication)**
 - Ignore unsafe behaviors
 - Report a problem, without providing a solution
 - Undermine team discussions with negative comments
 - Fail to support discussions and decision-making that encourage and promote Safety
 - Conduct safety-critical work when fatigued, unwell or otherwise unfit
- Be Mindful of (Risk Management)**
 - Expect somebody else to consider the Safety & Health implications of a task
 - Begin a task without thinking the job through
 - Fail to concentrate on current task, miss steps in the procedure
 - Make assumptions; neglect to verify
 - Only focus on my own task; ignore activities around me
 - Take unsafe short-cuts to complete the job quicker
- Get Involved (Involvement)**
 - Tend to follow others regardless of the consequences
 - Fail to take the initiative
 - Fail to get involved with Safety & Health issues
 - Try to solve the problem without involving others; put self before team
 - Fail to attend required Safety & Health training



Must Win Battles - Safety



Must Win Battles – First Time Quality



Key Drivers:

- Incomplete OPRP & HACCP documents
- Metal Detector Failures
- Open Seals
- Sensory Holds

Key Actions:

- DORs driving to root cause
- Metal Detector improvements
- Sensory refresher training



NCE = Continuous Improvement to 0 Waste

- ▶ Nestle
- ▶ Continuous
- ▶ Excellence

- ▶ Why do we need to Improve?



Must Win Battles: Performance and Material Loss

- ▶ How much money do you think we wasted this year?

- ▶ \$100,000
- ▶ \$500,000
- ▶ \$1,000,000
- ▶ \$10,000,000



\$30,000,000



0 Waste !

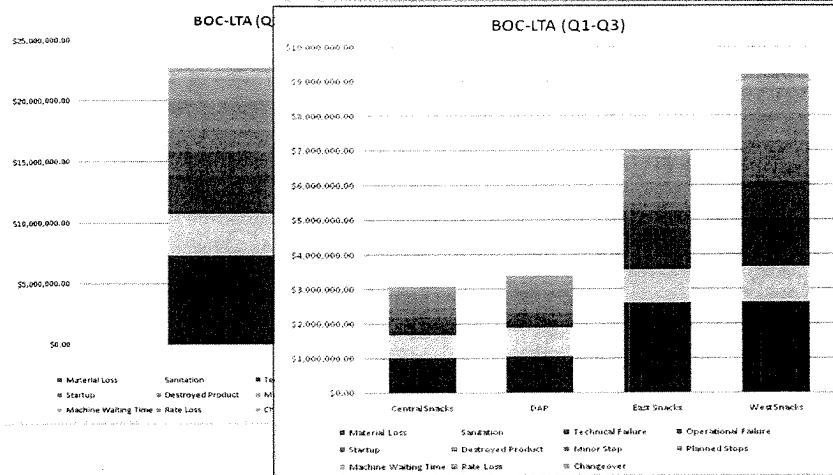
\$30,000,000

► \$30,000,000 per year =

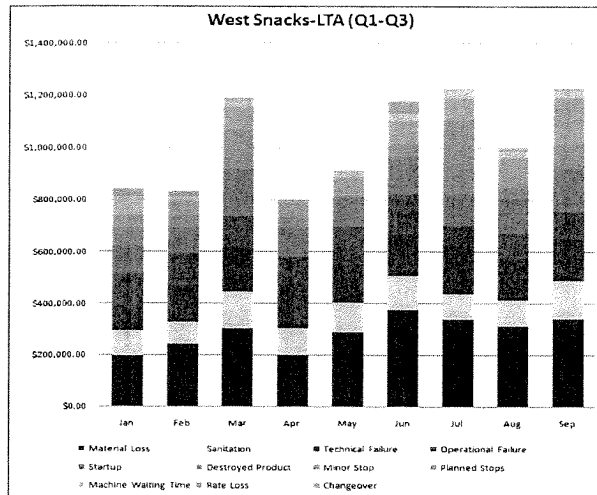
- \$2,500,000 per month
- \$600,000 per week
- \$82,000 per day
- \$27,000 per shift
- \$3,600 per hour
- \$60 per minute
- \$1 per second



BOC Loss Tree Analysis



West Snacks 2010 War on Waste



Key Drivers

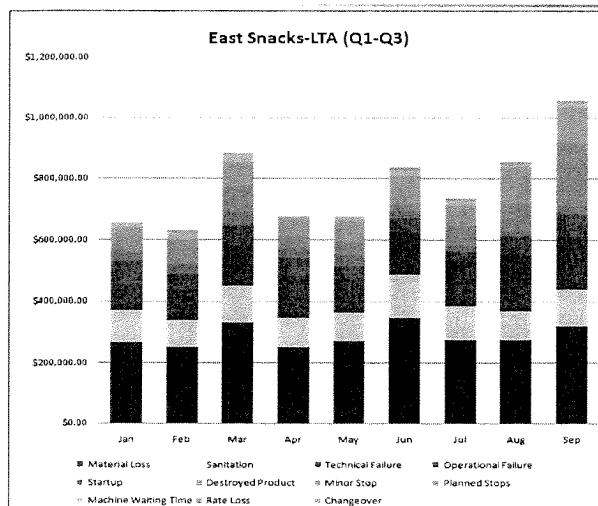
- Skinny Cow mix reformulation
- Bodine wafer quality
- Rollo2 & Rollo3 Wrappers

Key Actions

- Wrapper upgrades
- DORs and SDOs
- Operations and Maintenance coming together to drive to root cause



East Snacks 2010 War on Waste



Key Drivers

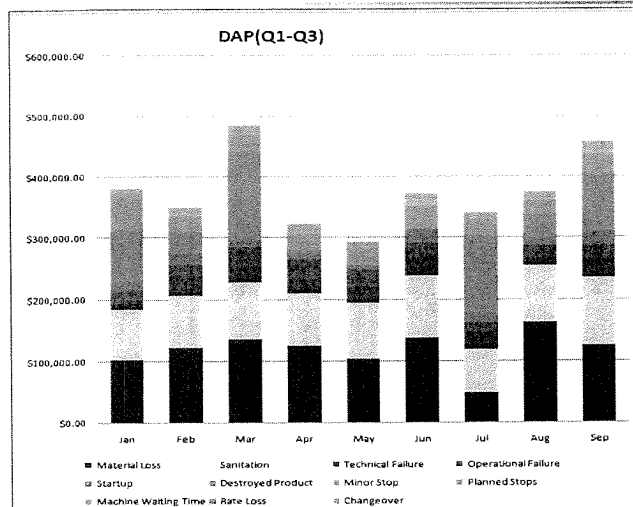
- Material adjustments
- Point to point rates
- Knowledge base
- Lack of spare parts

Key Actions

- SIMS standard operation procedures
- Mix and Coating meters
- White Belt Projects
 - L14 Cartoner
 - L14 Open Wrap
 - L15 Material Adjustments
- Green Belt Projects
 - Round top cones head size consistency
 - Cracked cones



DAP 2010 War on Waste



Key Drivers

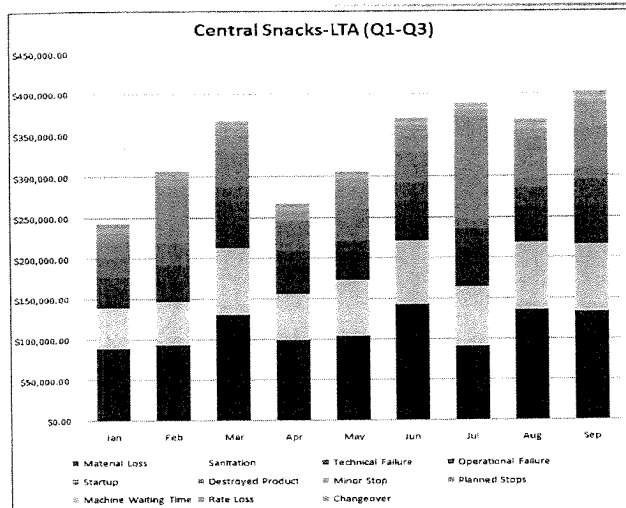
- L30 Tamper Seal
- L32 Startup losses
- L30 Bad rice

Key Actions

- DOKs driving to root cause
- L32 divert valve
- White Belt
- L30 Changeover centerlines



Central Snacks 2010 War on Waste



Key Drivers

- Knowledge base
- Lack of spare parts
- Flavoring accuracy

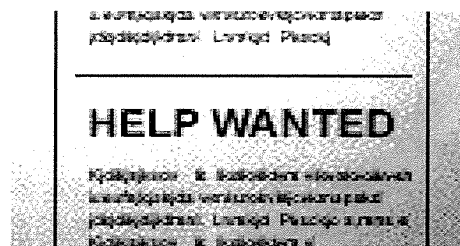
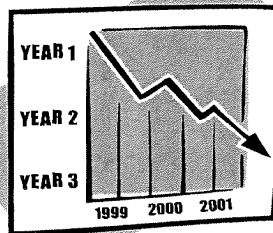
Key Actions

- BMS standard operation procedures
- Flavor error proofing
- White Belt Projects
- L17 Wrapper
- L8 SMED



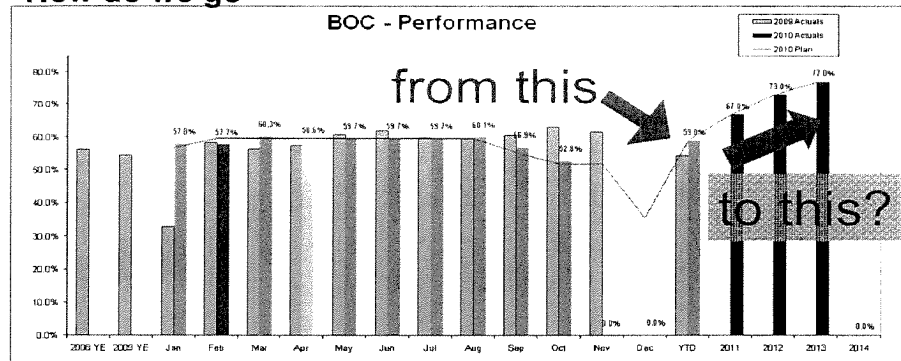
The Future ?

- What will happen if we continue to lose \$30M per year?



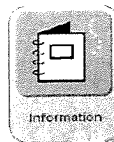
The Future ?

How do we go



1. We make it right the first time!

► How do we make it right the first time?



1. Create BIMS standard procedures

- Controlled documents in a standardized format that tell us all aspects of how to consistently make safe, high quality, products

Training

Knowledge
useful abilities
backbone of the
required for a tr
-day

2. Train everyone to the standards

- Creates consistency
- Closes gaps in knowledge

CONSUMER TRUST

Team Members have the skill and the knowledge to perform their job



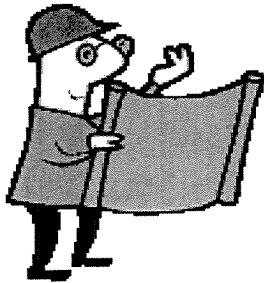
It's not that easy - Do this Do that !

► With so many things going on, it is not that easy to make it right the first time...

- Machine failures
- Meetings
- No resources
- Not enough money
- Not enough time
- Late deliveries
- Outside requests
- Audits
- Visits
- Improvements and and and



Let's get organized – Make a PLAN !



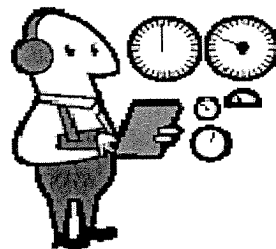
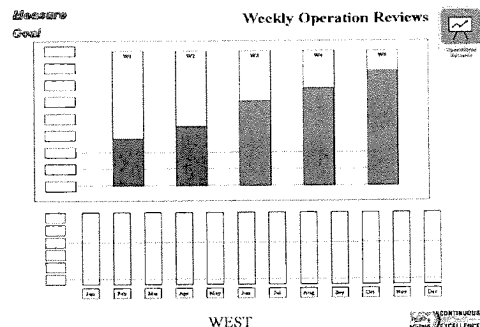
1. What needs to be done
2. Set Priorities
3. Create the measure for Success
4. Assign the resources
5. Pick a date
6. Deliver the Plan

Who is doing What by When!



Measure, Review & Improve!

- ▶ If you don't measure it, you can't improve it
- ▶ Put the right measures in place that will deliver the Plan
- ▶ Review the measures frequently



When things don't go right.

- ▶ Machines will break....
- ▶ Adjustments are made....
- ▶ When efficiency is not 100% - what do we do?

- ▶ We have to find the root cause to get to zero waste.....



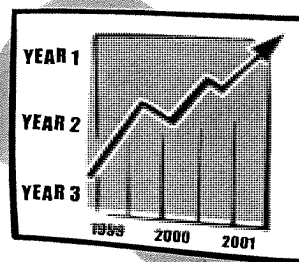
Problem Solve.

Go See Think Do
M
A
I
C

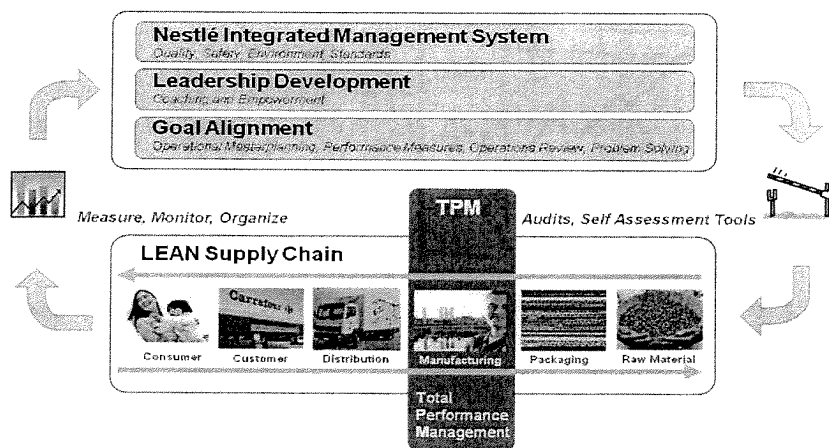


Continuous Excellence

- By constantly making it right the first time, finding the root cause and eliminating the root cause, we will get better and reduce the waste.

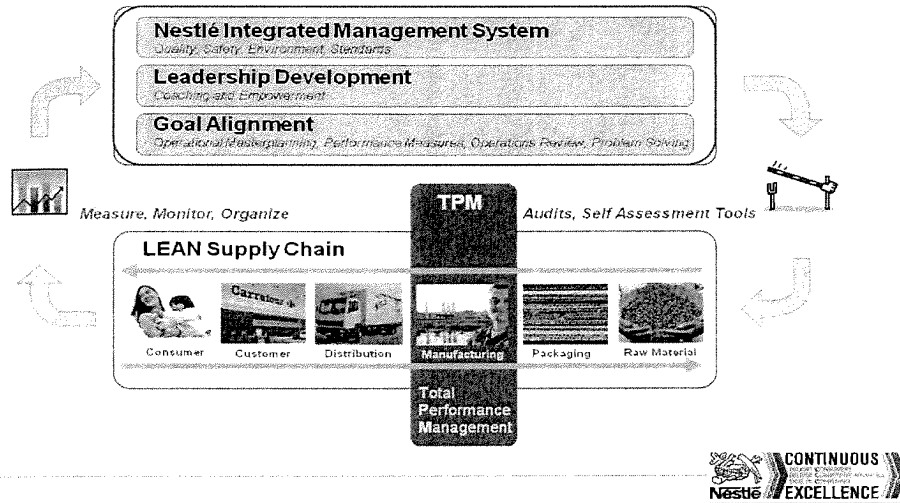


Putting it all Together – NCE Model

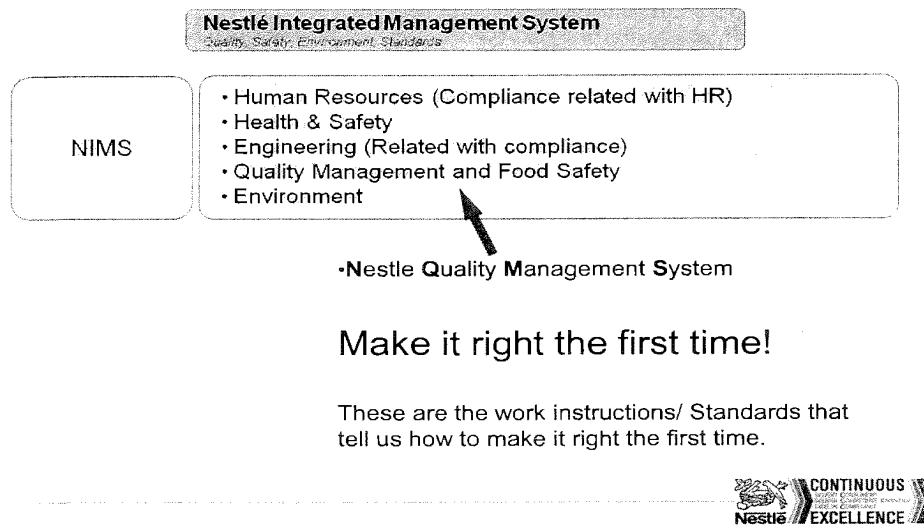


Foundations of NCE

The NCE Foundations



Putting it all Together: NQMS



Putting it all Together: Knowledge / Skills

Leadership Development

Coaching and Empowerment

Leadership
Development

- Success Profiles – Leadership assessed
- Leadership & Coaching - Key gaps built into Development Plan
- Succession Planning – Process implemented & assessed

Training

Knowledge
useful abilities –
backbone of co-
quired for a tr
today

- Seal Training
- Defining the skills required and closing the gaps



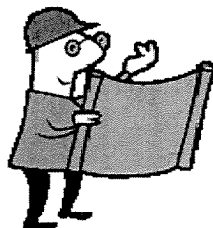
Putting it all Together: Goal Alignment

Goal Alignment

Operational Masterplanning, Performance Measures, Operations Review, Problem Solving

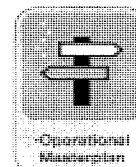
• Goal
• Alignment

- Operational Masterplanning – Business alignment



Build the Plan

Defines the direction we need to take.
Who is doing what by when.



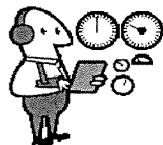
Putting it all Together: Goal Alignment

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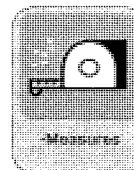
- Goal
- Alignment

- Performance Measures – KPIs and Objectives cascaded



Measures

- What are we going to measure so that we know what success looks like.



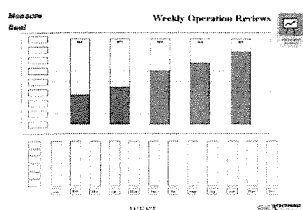
Putting it all Together: Goal Alignment

Goal Alignment

Operational Masterplanning, Performance Measures, Operations Review, Problem Solving

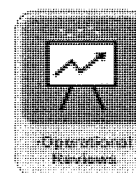
- Goal
- Alignment

- Operations Reviews – Robust reviews



Reviews

- We need to review the measures to make sure that we are on track for success. SHO's, DOR, WOR & MOR.



Putting it all Together: Goal Alignment

Goal Alignment

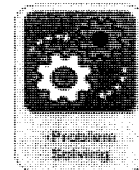
Operational Masterplanning, Performance Measures, Operations Review, Problem Solving

- Goal
- Alignment

- Problem Solving – Basic DMAIC review

Problem Solve

When things go wrong, find Root Cause and eliminate the issue



Putting it all Together: Goal Alignment

Goal Alignment

Operational Masterplanning, Performance Measures, Operations Review, Problem Solving

- Goal
- Alignment

- Problem Solving – Basic DMAIC review

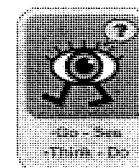
Go See Think Do

By eliminating the root cause of our problems, we have to get better.

Driving Exceptional Results



M
A
I
C

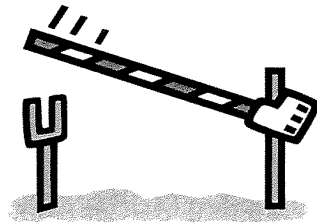


Now we have the Basic Foundations

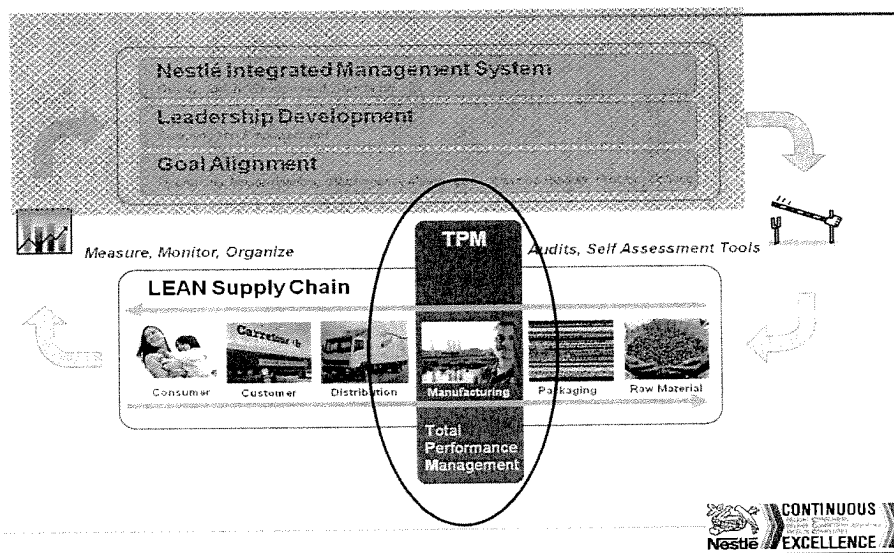


The Gate:

- The gate ensures that we have the foundations in place to continue the NCE journey. If the foundation is weak, then it is very difficult to drive **EXCEPTIONAL RESULTS** and the process will fail.

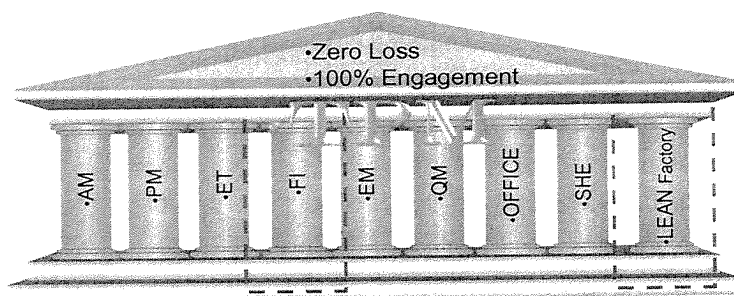


After the Gate



TPM - The 9 pillars of Total Performance Management at Nestlé ...

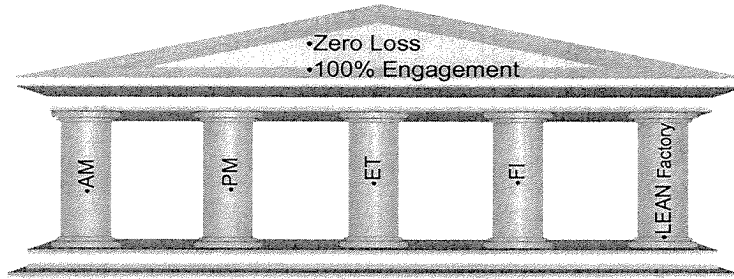
•Success will rely on *standard* TPM Definition and Implementation ...



CONTINUOUS
EXCELLENCE

•The Enablers of Total Performance Management at Nestlé ...

•Build our 4 enabling Pillars so that TPM is a success.



BOC will become a Lean reference factory therefore we will develop our Lean Pillar



What does TPM look like?

- Change parts of a paper plant
- Change parts in filling area



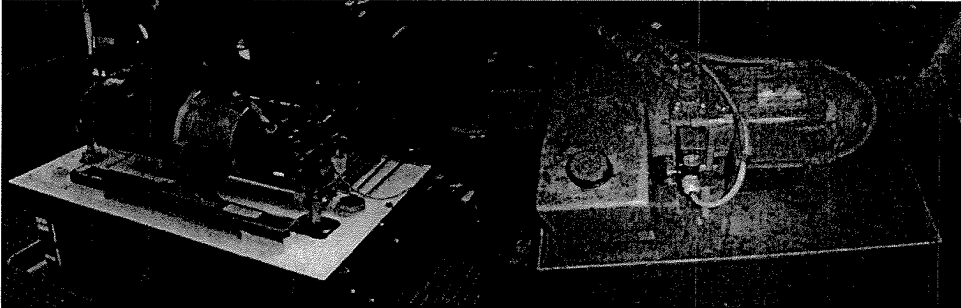
- Questions:
- Who has to search more for a part? (time)
- Which part will have more tear & wear?



What does TPM look like?

- ...a 8 year old pump
- at a tire factory

- ... 3 year old pump
- in a food factory



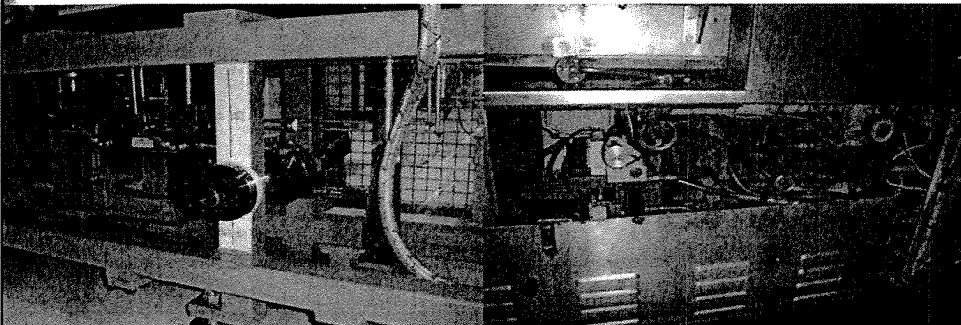
- Question:
- Which pump looks younger?
- Which pump will live longer?
- If one breaks down, which one is easier to repair? (time)



What does TPM look like?

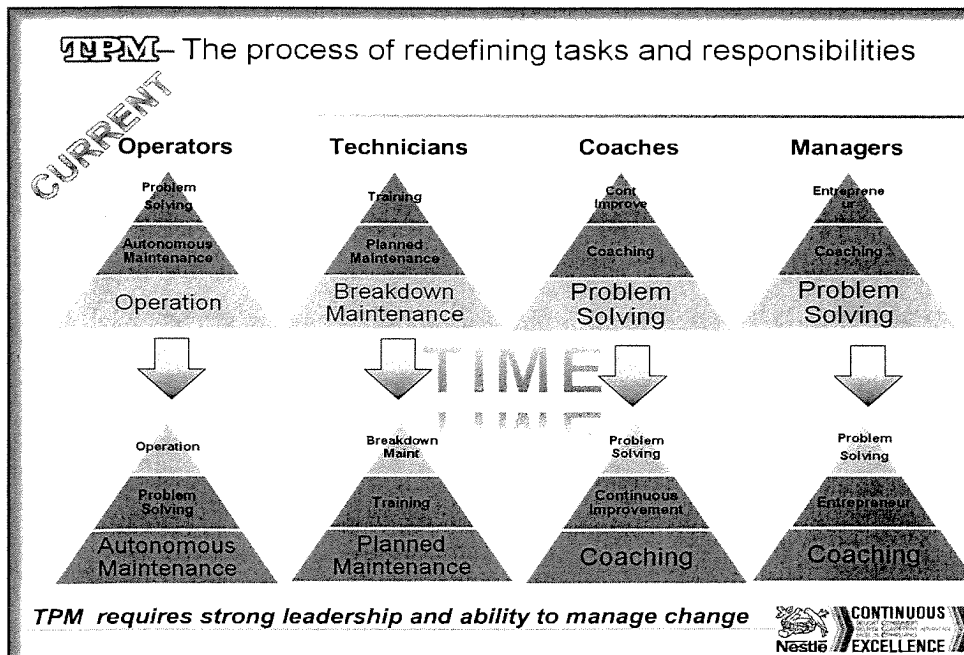
- ...a TPM machine

- ...a badly maintained machine



- Question: If one breaks down, which is easier to repair? (time)





Why TPM?

- ▶ **IT WORKS** - Validated across hundreds of companies.
- ▶ **IT'S SUSTAINABLE** - TPM provides a standard approach to improve manufacturing systems for many years (5 years+)
- ▶ **IT'S CONTINUOUS** - TPM is an enabler for improvements across the overall supply chain by providing a reliable and flexible manufacturing system

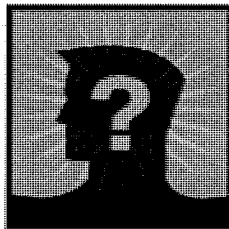
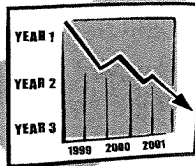
Now What?

- ▶ Continuous Improvement Operational Reviews (Team rooms, White belts)
- ▶ Building the AM plan now.
- ▶ Line 16 to remain the pilot until all systems are in place
- ▶ Roll Out new lines Q3.

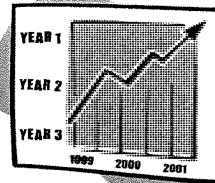


Questions?

Losing \$30M yearly to



Driving Exceptional Results





2010



2010

Dreyer's Grand Ice Cream BLUEPRINT FOR SUCCESS

Vision

"To be the Very Best Nutrition, Health & Wellness Ice Cream and Frozen Snacks Company in the United States."

Dreyer's Grand Ice Cream will provide Ice Cream and Frozen Snacks products that offer superior Nutrition, Health & Wellness solutions to our consumers and customers. Through superior consumer insights, we will understand consumers' nutritional and emotional preferences and delight them better than our competitors by anticipating their needs and providing them with innovative branded products and communications. Our national direct store delivery system will ensure superior efficiency, quality and availability to our customers and consumers, yielding sustainable competitive advantage.

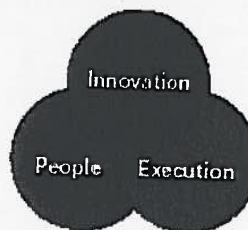
Measurements of Success

- Exceed Annual Sales Targets
- Deliver significant, sustainable improvement in Profit
- Grow share in Premium, Super Premium and Snacks

Strategies

We will execute the Nestlé worldwide strategies of Innovation/Renovation, Consumer Communications, Product Availability, and Low Cost—Highly Efficient Operations. In the United States, we are also focused on developing these three competencies to take us to the next level of performance and help us achieve our vision:

- **People:** Create a world-class talent machine that thrives in a performance culture
- **Execution:** Execute with excellence and discipline, achieving continuous improvements to constantly deliver on ambitious commitments
- **Innovation:** Develop a competency and culture for constant innovation



Core Values

Our core values are consistent with and support The Basic Nestlé Management and Leadership Principles.

- **People:** People from diverse backgrounds are our most important asset and the source of our competitive advantage. We expect and reward excellence as well as ethical behavior.
- **Quality:** We are dedicated to continuous improvement in the safety and quality of every product we make and everything we do.
- **Brands:** Our strong brands ensure our continued growth and profitability. Every employee is responsible for supporting the growth of our brands.
- **Consumers:** Our reason for being is to understand, anticipate and best fulfill our consumers' wants and needs.
- **Customers:** We appreciate and support the critical role our customers play in getting our brands to consumers while working closely together to achieve mutual value.
- **Performance:** We are committed to achieving our High Performance Targets—both as a company and as individuals—while creating shared value for our employees, customers, consumers as well as society at large.

Nestlé. Good Food, Good Life

Dreyer's Grand Ice Cream Company
Bakersfield Operations Center

2010 Employee Handbook

Table of Contents

Topic	Page
Grooves Culture Drivers	3
About your Employment	4
General Information	5 – 8
<ul style="list-style-type: none"> - Equal Employment - Employment Records - Initial Evaluation Period - People Involvement - Handbook Changes - Seniority - Bulletin Boards - Solicitations and Distribution - Parking Lot - Holidays - Benefit Programs 	
Anti-Harassment	9 – 10
Controlled Substances	10 – 11
Company Property	11
Vacation	12
Attendance	13 – 18
<ul style="list-style-type: none"> - Perfect Attendance Award - Attendance Control System - Breaks and Lunches - Calling off - No Call/No Show 	
Leave of Absence	16 – 18
<ul style="list-style-type: none"> - Family Medical Leave Act - Military Leave - Personal Leave of Absence - Work Related Leave of Absence 	
Corrective Action	18 – 19
Compensation Opportunities	19 – 21
<ul style="list-style-type: none"> - Pay Week - Pay Day - Clocking In - Call Back Pay - Errors in Pay - Funeral Pay - Jury Duty Pay - Sick Pay 	
Premium Pay	21 – 22
<ul style="list-style-type: none"> - Holiday Premium - Overtime Premium - Report In Premium - Shift Premium - Performance Incentive Program 	
Job Assignments	23 – 27
<ul style="list-style-type: none"> - Job Posting/Bidding System - Overtime Assignments - Reduction in Workforce - Job Elimination - Line Down 	
Hours of Work Policy	27 – 28

GROOVES CULTURE DRIVERS

Our performance culture is characterized by the following set of beliefs that underlies our "We Can Make a Difference" philosophy and are the core of everything we do here:

Respect for the Individual

- *Treat people with respect and dignity*
- *Trust people to do the right thing*
- *Support efforts to maintain work-life balance*

Teamwork

- *Perform as individuals but win as a team*
- *Collaborate cross-functionally*
- *Engage all stakeholders in achieving desired outcomes*

Alignment

- *Align Company, Function, Team, and Personal priorities to achieve business goals*
- *Support our frontline in successfully serving customers and consumers*
- *Ensure accountability for results at every level*

Passion for Results

- *Do what you say you are going to do*
- *Exceed your goals; take personal accountability and ownership for results*
- *Execute flawlessly—continuously improve*

Win in the Marketplace

- *Delight our customers and consumers*
- *Drive category leadership and reinvention*
- *Be first to capitalize on market opportunities*

People Involvement

- *Inspire and develop people—every leader's role*
- *Engage every employee's heart and mind to win*
- *Ensure people have the tools and resources to perform*

Face-to-Face Communication

- *Provide honest and direct communication*
- *Be transparent; no hidden agendas*
- *Seek and maintain openness to others ideas and opinions*

Hoopla

- *Recognize individuals and teams for doing spectacular work*
- *Celebrate exceptional results*
- *Take care to make Hoopla personal*

Case No.	Official Exhibit No.
31 RC 066625	E-9
Disposition:	Identified <input checked="" type="checkbox"/>
Rejected	Received <input checked="" type="checkbox"/>
IN THE MATTER OF:	
NESTLE	
Date:	Witness:
10-27-11	McFADDIN
Pages:	Reporter:
27	999

IMPORTANT INFORMATION ABOUT YOUR EMPLOYMENT

This Handbook is designed to acquaint you with Dreyer's Grand Ice Cream Company — BOC (BOC) and provide you with information about working conditions, Team Member benefits, and some of the policies affecting your employment. This Handbook is merely a guideline and does not constitute a contract of employment, nor does it change the employment-at-will policy permitting you or Dreyer's Grand Ice Cream Company — BOC to end our relationship for any reason, at any time. You should read and understand all provisions of the Handbook. It describes many of your responsibilities as a Team Member and outlines the programs developed by Dreyer's Grand Ice Cream Company — BOC to benefit you. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

No employee handbook can anticipate every circumstance or question about policy. As Dreyer's Grand Ice Cream Company — BOC continues to grow, the need may arise and Dreyer's Grand Ice Cream Company — BOC reserves the right to revise, supplement, or rescind any policies or portions of the Handbook from time to time as it deems appropriate, in its sole and absolute discretion. However, no future revision or modification of this Handbook will change the parties' employment-at-will relationship. You will, of course, be notified of such changes to the Handbook as they occur.

Further, no representative of Dreyer's Grand Ice Cream Company — BOC has the authority to enter into an agreement of employment for any specified period of time or to make any agreement contrary to the foregoing.

NOTICE OF REVISION

This Team Member Handbook is a revised version of any previous Team Member Handbook issued by Dreyer's Grand Ice Cream Company — BOC.

This Handbook supersedes and revokes all prior versions of any previous Handbook, memorandum, bulletin, policy, or procedure on any subject discussed in this Handbook that has been issued prior to the date occurring below.

This revised Team Member Handbook is effective January 2010.

General Information

Equal Employment

The Company adheres to a policy of equal employment opportunity for all Team Members. The Company is an equal opportunity employer, meaning that employment opportunities are offered to all individuals without regard to race, age, national origin, gender, religion, marital status, physical disability or any other consideration unlawful under any federal, state, or local law.

Any Team Member with questions or concerns about any type of discrimination in the workplace is encouraged to bring these issues to the attention of their Coach or People Support. You can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to corrective action, up to and including termination of employment.

Your Employment Record

Your employment record at the Company is kept in a confidential folder in the People Support Department. This record is very important it contains such information as your social security number, tax records, your home address, telephone number and family status. It also contains your job and pay changes as well as performance related documents. It is especially important that you keep this record up-to-date. If you should move or change your telephone number, or if your family status should change, be sure to come into the People Support Department so they can make the necessary changes. You have a right to review the information in your employment record. Upon written request, a People Support representative will review your employment record with you at a mutually convenient time.

Initial Evaluation Period

During your first 90 calendar days of employment, your introductory period, your performance will be evaluated. You will receive a 30/60/90 day evaluation from your peers and Coach. Your evaluation will be based on your overall performance, behavior and attendance. By the conclusion of your introductory period, the Company will make a determination as to whether or not to continue your employment as a regular full time Team Member. Team Members in their initial evaluation period may not use their PE day and will not be granted time off during this period (vacation/floating holiday).

People Involvement

At BOC, we look for opportunities for Team Members to be involved in shaping the policies, practices and general environment. There are a number of standing committees such as the Safety Committee, Grooves Committee, Autonomous Maintenance teams or other NCE related teams, and more. We encourage you to get involved with a team or committee that you have passion about.

Handbook Changes

Periodically throughout the year we will evaluate our existing policies and practices including those in this handbook. When policies or practices change during the year, a notice of the change and a copy of the new policy/practice will be posted with an effective date. The new policy/practice, if effective during the year, will supercede the one in this handbook.

Company Seniority

Seniority numbers are assigned based on date of hire and the last four digits of the employee's social security number. Employees hired on the same date are issued seniority numbers based on the last four digits of their SSN; the lower the last SSN are the higher the seniority number. The Seniority list is updated regularly and your seniority number may change with each update. You can check with People Support or your Coach to find out what your seniority number is.

Seniority is used to determine the following factors:

Vacation requests submitted prior to March 1st.

Reduction in Workforce

Returning to work from a reduction in workforce

Seniority is not considered a primary factor for purposes of creating work schedules or making line/role specific assignments outside the job bidding process.

Departmental Seniority

In some departments, Maintenance for example, departmental seniority is considered a factor in job assignments. This is done to ensure that skill sets are appropriately distributed across the site.

Bulletin Board

Important notices, announcements, and other items of interest to all The Company — Bakersfield Team Members are occasionally posted on Company bulletin boards. You should check the bulletin boards on a regular basis. All bulletin boards are the property of the Company. Company bulletin boards are to be used for Company business only, and Team Members are strictly prohibited from posting non Company-related information on any bulletin board and also from posting Company-related information without proper authorization. Posting, removing, or tampering with bulletin board notices without proper authorization is prohibited.

Solicitations and Distributions

In an effort to ensure a productive and harmonious work environment, persons not employed by The Company — Bakersfield may not solicit or distribute literature in our workplace at any time for any purpose.

While we recognize that Team Members may have interests in events and organizations outside the workplace, you will not be permitted to solicit or distribute literature concerning outside activities during work time. To govern the solicitation of Team Members or the distribution of literature to Team Members on Company property, the following rules have been established:

- Solicitation or distribution of literature by Team Members during working time that in any way interferes with work is prohibited.
- Distribution of literature by Team Members in work areas is prohibited.
- Solicitation or distribution of literature by non-employees on Company premises is prohibited.
- Distribution of literature by Team Members on Company property and non-work areas during working time that in any way interferes with work is prohibited.

For the purpose of these rules, "working time" is defined as those periods that are designated for an assigned job task by the Team Member. If either the Team Member soliciting or distributing materials or the Team Member being solicited or given the material is on work time, these rules shall apply.

No Team Member shall enter or remain on Company premises for any purpose except to report for, be present during, and conclude his/her work shift. You should not report to work for more than fifteen (15) minutes before your shift begins and should not remain on the premises more than fifteen (15) minutes after your shift ends without authorization from your Coach. Exceptions will be allowed for the purpose of attending to company business in administration or supervisory offices. Picking up paychecks or submitting insurance forms are some examples of the exceptions to this rule.

Under no circumstances will non-employees of the Company be permitted to solicit Team Members or distribute written material for any purpose on Company premises without the expressed consent of management.

Parking Lot

The parking lot is provided for the convenience of all Team Members

Parking in the visitor, handicapped or other specifically designated spaces by Team Members is prohibited (without the express approval of management). Cars with noticeable fluid leakage, i.e. anti-freeze, hydraulic fluids, oil, brake fluid will not be permitted to park in the parking lot. Parallel parking or taking up more than one space is prohibited. If it becomes necessary to tow a vehicle that is in violation of the policy, it will be towed at the owner's expense.

The Company assumes no liability for damage to vehicles or stolen articles in the parking lot.

All vehicles entering and exiting the property are subject to search. This search may include any bags, coolers or containers in the vehicle.

Holidays

Each year the Company will post a schedule of the observed paid holidays. This posting may include specific established holidays as well as floating holiday(s). During the first year of employment, eligibility for any Floating Holiday(s) for that year will be pro rated based on date of employment. Team Members hired on or after June 1 will not qualify for the floating holiday, if there are two floating holidays in the year Team Members hired on or after June 1 will only qualify for one of the floating holidays. Floating Holiday (s) must be taken prior to the last pay period of the year and should be scheduled in advance. Floating holidays not taken by the final pay period of the year will be forfeited.

To receive holiday pay, you must work at least 80% of your scheduled shift on your last regularly scheduled workday before and after the scheduled floating holiday.

Benefit Programs

The Company offers a competitive package of benefit programs to Team members and their dependents. These programs are described in detail in separate Plan booklets, which are available through People Support. Whenever there is a question concerning any of the benefit programs, Team Members should consult with their Coach/manager or the People Support Department which will answer any questions concerning the program.

ANTI - HARASSMENT

The Company has an express Zero Tolerance Policy on harassment and discrimination in the workplace. It is the policy of the Company that all Team Members shall have the opportunity to work in an atmosphere and environment free from any form of harassment or retaliation based on race, color, religion, gender, sex, national origin, age, or disability. Such forms of harassment or retaliation constitute discrimination under various state and federal laws and will not be tolerated by the Company.

Harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that:

- Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

Examples of harassing conduct include, but are not limited to, the following:

- Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to race, color, religion, gender, sex, national origin, age, or disability; and
- Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on walls, bulletin boards, or elsewhere on Company premises or circulated in the workplace.

Similarly, sexual harassment involves:

- Making, as a condition of employment, unwelcome sexual advances or requests, requests for sexual favors, or other verbal or physical conduct of a sexual nature;
- Making submission to or rejection of such conduct the basis for employment decisions; or
- Creating an intimidating, offensive, or hostile work environment by such conduct.

The following are examples of sexual harassment:

- Verbal—sexual innuendo, suggestive comments, insults, threats, jokes about gender-specific traits, or sexual propositions;
- Nonverbal—making suggestive or insulting noises, leering, whistling, or making obscene gestures;
- Physical—touching, pinching, brushing the body, coercing sexual intercourse, or assault.

Any Team Member who feels that he/she has suffered any form of harassment or retaliation must immediately report the alleged conduct to his/her Coach or to People Support so that a confidential investigation of the complaint can be undertaken. Further, any Team Member who observes conduct by another Team Member, which

he/she believes to be harassing, retaliatory, or discriminatory, should report such conduct as outlined above. All complaints of harassment will be treated confidentially and will be investigated promptly and thoroughly.

Any individual found by the Company to have harassed another individual is subject to appropriate corrective action up to, and including, termination.

Retaliation or discrimination against a Team Member for reporting or complaining about harassment is prohibited. However, Team Members should recognize that false accusations of harassment could have serious effects on innocent individuals. The making of accusations which are known by the accusing person to be false is a form of misconduct which will likely result in serious impairment of the Company's efforts to administer this policy properly and effectively for the benefit of all Team Members. Accordingly, such misconduct may result in corrective action, up to and including termination.

We trust that all Team Members will continue to act in a responsible and professional manner to establish a pleasant working environment free of discrimination and harassment.

CONTROLLED SUBSTANCE POLICY

The Company recognizes its responsibility to provide a drug-free and safe work environment to all Team Members as well as provide a safe, wholesome, unadulterated product to the consumer. To achieve this, the Company reserves the right to conduct drug-screening tests of existing Team Members where deemed necessary.

Team Members may be asked to submit to a drug and/or alcohol test if the Company has reason to believe that their ability to perform work safely or effectively may be impaired. Reasonable Suspicion testing will be based upon specific, contemporaneous, articulable observations of a management official(s) concerning the appearance, behavior, speech, or body odors of a Team Member.

Team Members involved in work related accidents (whether or not they require medical attention), returning to work from a leave of absence, or absent from work without a reasonable explanation may be subject to drug and/or alcohol testing.

The Team Member will be tested at the designated facility and transportation will be provided. The Company will determine for which drugs testing will be performed and the cutoff levels at or above which a test result will be considered positive proof of drug and/or alcohol usage.

If a Team Member refuses to consent to testing, fails to appear for testing, tampers with the test, or otherwise fails to cooperate with the testing procedure, he or she will be considered to have tested positive.

The unlawful manufacture, distribution, possession, use or sale of alcohol, drugs, narcotics, or other controlled substances on Company property is prohibited. Any

Team Member violating this policy shall be subject to immediate corrective action, up to and including termination. The determination of what corrective action is appropriate for a violation of this policy rests solely with the Company. Discipline may be based not only on a violation of this policy, but also on prior poor performance, workplace misconduct, other rule violations, and any other factors which the Company determines to be relevant. This policy in no way infers or creates any contractual obligation to follow any particular procedure.

COMPANY PROPERTY

The removal of any property, product, material, equipment, etc, without the express approval of an appropriate member of management is strictly prohibited. When management approves the removal of property you must complete a Material Pass form which you can obtain from your coach or other manager. Finished product is made available in the break room for Team Member's consumption while on the premises only.

All individuals entering and exiting the property are subject to search. This search may include any bags, coolers or containers in the vehicle. Anyone found to have unauthorized company property in their possession when exiting the premises will be subject to appropriate corrective action.

Computers / Internet Access

The use of company PCs in general, and using such for Internet access specifically, is intended for business purposes only. Individuals who are found to be abusing the systems and tools provided or made available to them (including software and Internet access) will be subject to corrective action.

Lockers

The Company provides lockers for the convenience and use of its Team Members. Only Company issued locks are to be used. Personal locks placed on lockers will be removed (cut) by the Company. The Company is not responsible for any articles placed or left in a locker that are lost, damaged, stolen or destroyed.

The Company may conduct periodic locker inspections to ensure lockers are not contaminated or there are no sanitation problems. In addition, if the Company has a reasonable suspicion of theft, or that drugs, alcohol or other prohibited materials are being stored in lockers; a Team Member's locker may be inspected. Such an inspection may be conducted during, before or after working hours by a designated representative of the Company. Team Members who, if requested, fail to cooperate with any inspection will be subject to corrective action.

Prohibited materials, including weapons, explosives, alcohol, and illegal or unauthorized prescribed medications, may not be placed in a locker. Perishable items including food may not be stored in lockers.

VACATIONS

The Company considers a yearly vacation as a necessary period of rest and relaxation. Team Members are eligible for annual vacation accrual, according to their length of service, as follows:

Length of service	Annual Accrual	Weekly Accrual
1- 5 years	80 hours	1.538 hours
5 - 10 years	120 hours	2.308 hours
10+ years	160 hours	3.077 hours

Team Members reaching five (5) or ten (10) years of service will be eligible for the appropriate vacation accrual on their anniversary date.

Team Members may not receive vacation pay in lieu of time off.

Vacation cannot be taken before January 1st eligibility date.

Vacation should be taken in weekly segments; however Team Members with two (2) or more weeks may split the second and/or third week in increments of one day or more.

Vacation time should not be carried over from one calendar year to the next; it must be scheduled for the year in which it is earned. Team Members who do not schedule their vacation time by the end of the 3rd quarter will be provided assistance in scheduling the remaining vacation time.

Team Members are required to schedule at least 1 week of vacation time prior to March 1st of the current year. A Team Member may schedule more than 1 week prior to March 1st, however, the time must be a continuous block of time. The time scheduled and submitted for approval prior to March 1st will be approved based on seniority and business needs (only a specified number of Team Member can be gone at one time).

Vacation time scheduled and submitted for approval on or after March 1st will be based on a first come first served basis. This also applies to vacation time that is not scheduled in weekly increments prior to March 1st.

Once all Team Member's have an opportunity to schedule their first week (block) of vacation we will begin at the top of seniority for those that wish to schedule more than one block of vacation, provided this takes place prior to March 1st, otherwise, it will be based on first come first served.

If a Team Member is on a Leave of Absence vacation benefits will not be accrued for the period of the leave.

ATTENDANCE

You are part of a team, and as a Team Member your regular and punctual attendance is not only expected, but also required. When you are absent, others must perform your work, just as you must assume the workload of others who are absent. In order to encourage good attendance, The Company has adopted a policy on attendance that balances the interests of all Team Members against occurrences that affect us all.

Perfect Attendance Award

At the end of the year, Team Members who have perfect attendance are recognized for their achievement. Team Members receive \$100.00 for each consecutive year of perfect attendance up to a maximum of \$2000 per year. The only absences considered excused for the purposes of qualifying for perfect attendance, are as follows:

Vacation – Holiday - Floating Holiday - FMLA Absence - Jury Duty - Bereavement

This attendance policy is simple and fair to all Team Members. To monitor your attendance, your Coach will measure your attendance by tracking occurrences of absence from work.

Attendance Control

Purpose: The Company operates an ice cream manufacturing facility to produce products for public consumption. The Company must meet production schedules based on its customer's demand for these products. The regular and punctual attendance of each Team Member is vital in order for the Company to maintain and meet its production schedules in order to provide product to its customers. On accepting employment, each Team Member assumes full responsibility for reporting to work promptly and regularly and to notify the Company, in accordance with the established rules, of the unavoidable circumstances beyond reasonable control that may prevent the Team Member from reporting as scheduled. Therefore, all Team Members are expected to strive for perfect attendance by:

- Maintaining reasonable health standards and taking precautions against illness.
- Not permitting minor indisposition or inconveniences to keep them away from the job.
- Making every effort to live and work safely - observing safety rules and practicing safety, on and off the job.
- Attending to personal affairs and obligations at times outside of their working hours.

Procedure: An absence is defined as any occasion when a Team Member fails to report for work as scheduled, whether avoidable or unavoidable, voluntary or involuntary. Reporting to work 2 hours or more after your scheduled time is considered an absence. Leaving work 2 hours or more prior to the end of your scheduled shift, other than at the request of the company, is considered an absence. Each incident of absenteeism will have a numerical standard of one (1) occurrence. A Team Member who is absent for a period of 4 days or more will be required to submit a physicians

note. Upon release from their physician a Team Member may be required to see the Company physician for a fitness for duty determination. A Team Member's absence of 3 consecutive days or less will result in an incident of absenteeism. Team Members are expected to be only absent for the length of time which the situation warrants. Team Members who habitually are absent for 3 consecutive days will be evaluated on a case by case basis and appropriate performance discipline may be taken.

Times away from work not included in the definition of an absence are:

- Vacation
- Holidays
- Military Leave
- Jury Duty/Court Summons
- Funeral Leave
- Worker's Compensation Injury/Illness
- Family and Medical Leave Act Absences
- Personal Emergency Day

We realize that each of us is affected by personal emergencies which may prevent us from fulfilling our obligations at work. As such, each Team Member is allowed one (1) Personal Emergency (PE) Day each year for such occasions. If a sick time is available it will be automatically process, otherwise, the PE day will be unpaid. Using a PE day will disqualify a Team Member from obtaining perfect attendance and from receiving holiday pay if the PE day is used prior to or following a holiday as defined in the Holiday Premium Pay section of the handbook. A PE day can not be used on a holiday.

A tardy or leave early is defined as any occasion when a Team Member reports late, less than 2 hours, or leaves work with less than 2 hours of the scheduled shift remaining. Each individual tardy, or leave early, will have a numerical standard of one-half (1/2) occurrence. If the tardy or early departure is more than the aforementioned time the time absent will have a numerical standard of one-full occurrence.

The Company recognizes that a major illness or injury resulting in substantial loss of work time can happen to Team Members who otherwise have satisfactory attendance. However, misfortune does not befall everyone and certainly not to the same degree. In these situations, some extenuating or mitigating circumstances might occur and the Company, in its sole discretion, will evaluate each case on an individual basis.

When a Team Member develops a pattern of being absent from work, reporting late or leaving early, an attendance problem exists and needs to be addressed. Management will be reviewing each Team Member's attendance record continuously and will coach and work with those Team Members who are developing attendance problems. Team Members who have specific problems which result in attendance problems should discuss the problem with their Coach as quickly as possible so solutions can be mutually developed and a poor attendance record prevented. Perfect attendance, while not attainable by all, is the standard that every Team Member should strive to meet.

Any Team Member, who fails to respond to coaching and other corrective actions, becomes subject to final corrective action up to and including termination of employment. Such corrective action will be based on the following numeric guidelines.

# OF OCCURRENCES	CORRECTIVE ACTION STEP
0 - 4	NONE
5	STEP 1 - Coaching
6	STEP 2 - Written
7	STEP 3 - Final Written
8	TERMINATION

This attendance control policy provides for a rolling twelve (12) month period of work time. Work time is defined as time where the Team Member is normally scheduled to work. Not included in work time is time away from work for LOA's, shutdown period, etc. When a Team Member reaches a Final Written Warning an additional six (6) months will be added to the period in which the 12 rolling months began.

Breaks and Lunches

Team Members will receive two (2) 15-minute paid breaks during the course of their regular workday and a 30-minute lunch break. Breaks and Lunches are to only be taken in non- work areas. When a Team Member is required to work a minimum of 10-hours an additional 15-minute break is required. A Team Member who works ten hours or more in a shift is normally entitled to two half-hour lunch breaks. The 2nd lunch break may be waived with mutual consent, as long as the first lunch break was not waived. However, the additional lunch break can not be waived if the Team Member is required to work 12 or more hours in a day.

Excessive or extended breaks and lunches, skipped or short breaks and lunches, not accurately recording time for breaks and lunches, or other abuse of break and lunch periods will be addressed as a performance issue and will be subject to corrective action up to and including termination.

Calling Off

It is important to understand that each Team Member's attendance record is what he or she makes it. Good attendance is achievable by each Team Member and is essential to Teamwork. Please give this Attendance Control Policy your closest attention. In the event you are unable to report to work on time and you are as a consequence late or if you expect to be absent, you must report off by telephoning the Visitor Center at (661) 398-3444. At the time of the call off, you must specify the reason for the absence (sick, family member sick, etc.)

All call offs will be noted on your attendance calendar. Any available sick time will be automatically used to cover call offs.

All Team Members, who are calling off, are expected to call at least one (1) hour before their scheduled starting time. Failure to call off within the expected time will be addressed as a performance issue.

No Call/No Show

It is the Company's expectation that if a Team Member can not show up for work that he/she calls to notify the Company of the absence. Failure to notify, in addition to being an unexcused absence, will be treated as a performance issue. Three (3) consecutive days missed without notification to the Company will be considered an automatic resignation.

LEAVE OF ABSENCE

The Company realizes that occasionally you may need extended time off due to personal issues, medical problems or other business. If such a situation arises, you may request a Leave of Absence. A Leave of Absence means an approved absence from work of predetermined length. The leave may be with or without pay depending on the type of leave and for a period of time longer than four (4) working days. Any time off for periods of four (4) days or less is not considered a Leave of Absence. Team Members taking a Leave of Absence will be charged with one (1) incident on their attendance record. If you must request a Leave of Absence, you should contact your Coach and the People Support Department. The People Support Department can explain the various types of leaves available, the maximum duration allowed, and the effects of the leave on your benefits and specific eligibility requirements. Leaves of Absences are not automatically extended. Failure to return from or expiration of the maximum time allowed for a Leave of Absence could result in termination. If you will be unable to return to work at the termination of leave, you must come in to People Support and apply for an extension prior to the expiration of your leave of absence.

Family Medical Leave Act

To be eligible, a Team Member must have been employed with the company for at least 1 year and have worked at least 1250 hours within the 12-month period immediately prior to the leave. A Team Member can take up to 12 work weeks off, unpaid, within a 12-month period for one or more of the following reasons:

Child care – to care for a child born to, or placed for adoption or foster care with, a Team Member (spouses employed by the Company are entitled to a combined total of 12 weeks for child care);

Team Member medical - serious health condition of a Team Member which renders the Team Member unable to perform the essential functions of his or her job;

Family medical – serious health condition of a child, parent or spouse of a Team Member.

The definition of a serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Intermittent leave or a reduced work schedule will be granted if medically necessary for a serious health condition. The Team Member is responsible for scheduling medical treatment in a manner that does not unduly disrupt the operations of the facility.

The Company measures the "12-month period" for FMLA purposes on a rolling calendar basis. Therefore, any FMLA qualifying leave taken in the 21-month period, preceding the commencement of any requested leave, will operate to reduce a Team Member's entitlement to leave under the FMLA.

Two weeks advance notice is required (when foreseeable) for taking an FMLA leave. The request for a leave must be in writing on approved forms, except in an emergency, and must be turned in to People Support. A Team Member requesting leave must provide the Company and/or its designate with appropriate medical or other certification of the reason for such leave. In case of an emergency situation, the Team Member needs to call People Support within 24 hours.

A Team Member who believes an absence may be covered by FMLA must also notify People Support within two business days of the Team Member's return to work; otherwise, the absence is not protected under the FMLA. Upon notification of the absence People Support will provide the Team Member with the necessary information to contact CIGNA, the FMLA administrator, for consideration.

Team Members returning from a medical leave need a release from their health care provider. If you are released to work with restrictions the determination for modified work will be reached by your Business Unit Manager and Safety Health and Environment (SHE) personnel. If you are released without restriction you will be referred to SHE for evaluation of a fit for duty.

Should your leave be determined to be a FMLA qualifying event your absence will be excused for attendance tracking purposes. FMLA qualifying events do not have a negative impact on the Annual Perfect Attendance Award.

Military Leave of Absence

If you enter military service either by enlistment, draft, or recall, you may be granted an unpaid long-term Military Leave of absence for up to 4 years and 3 months.

If you have an obligation to perform annual military training, you will receive a two-week leave of absence. Upon presentation of a military pay voucher, you will be reimbursed for the difference between your normal compensation and the pay you receive while on military duty.

Personal Leave of Absence

A Personal Leave of Absence may be requested when you have personal circumstances requiring an extended absence from work. The Company will consider each request individually and the decision to grant a personal leave of absence will be at the sole discretion of the Company based on the circumstances surrounding each case. Should you be granted a personal leave, you may be paid for any earned unused vacation at the time of your leave. After 12 months of service, a Team Member may request personal leave for up to 1 month in duration.

Work Related Leave of Absence

If you have a work related injury or illness and are unable to perform your job or a modified work assignment, determined by your Business Unit and the EHS department, you will be granted a leave of absence according to EHS and workers' compensation guidelines.

CORRECTIVE ACTION

To ensure orderly operations and provide the best possible work environment, The Company — Bakersfield expects Team Members to follow rules of conduct that will protect the interests and safety of everyone involved. It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following types of behavior are merely examples of unacceptable behavior, and this list is not intended to be all-inclusive.

The following are examples of violations that may result in corrective action up to and including termination of employment:

- Theft or inappropriate removal or possession of Company property
- Theft of time
- Sleeping on the job
- Working under the influence of alcohol or illegal drugs
- Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, or while operating Company vehicles
- Fighting or threatening violence in the workplace
- Possession of firearm or other weapon while on company property
- Insubordination or other disrespectful conduct
- Violation of safety rules
- Sexual or other unlawful or unwelcome harassment
- Excessive absenteeism or any absence without notice
- Violation of any personnel policies
- Unsatisfactory performance or conduct
- Violation of the Grooves

Our goal is to help Team Members be successful in their jobs. Corrective action may be prescribed by your Coach or management-level Team Member when a Team Member's work performance or actions are sufficiently below standard so as to be

detrimental to the Company, or the Team Member violates any work rules or policies. If a Team Member has a performance problem, or does not follow the rules and procedures applicable to all Team Members, the Coach may provide coaching in situations where coaching would be beneficial to both the Team Member and the Company. However, the Company in its sole discretion reserves the right to institute appropriate corrective action depending on the particular facts surrounding each situation.

The Company reserves the right to take any form of corrective action against any Team Members at any time. In general, the types of corrective actions are:

- Step 1 Verbal Counseling
- Step 2 Written Counseling
- Step 3 Written Warning - at this step an opportunity to step down or vacate the current position (for job related performance deficiencies) is available.
- Step 4 Final Written Warning
- Termination

A Team Member who has received a Written Warning or Final Written Warning will be considered to be in active corrective action proceedings for six months of work time. Work time is defined as time where the Team Member is normally scheduled to work. Not included in work time is time away from work for LOA's, shutdown period, etc. Management, at its sole discretion, reserves the right to take any form of corrective action against any Team Member at any time. While the circumstances of a particular case may result in termination for a first offense, other cases may result in other forms of corrective action. Management, at its sole discretion, will determine the form of discipline that any Team Member will receive for any violation of Company policy on a case-by-case basis. This policy in no way implies any contract or obligation to follow any particular corrective procedure.

A written record of all corrective action will be maintained in your employment record. You should discuss any problem you might be having with your Coach, remembering that in the spirit of face to face you may also discuss your problems with any member of management or a People Support person during the corrective action process.

COMPENSATION OPPORTUNITIES

The Company wants to attract and retain the best Team Members possible for its employment. In order to do so, the Company provides competitive wages and benefits. The Company regularly conducts studies and surveys to determine appropriate wage levels.

Pay Week

The pay week begins on Sunday and ends on Saturday.

Payday

Payday is on a bi-weekly basis. Specific paydays will be posted. Payroll checks/vouchers are distributed on Thursday's from 1 pm – 4 pm; checks/vouchers that are not picked up are mailed. Exceptions to this distribution schedule will be limited to weeks impacted by a Holiday Schedule.

Clocking in

Team Members are required to clock in at the beginning of their workday, prior to changing into their uniform, and they are expected to be at their work station on time. Team Members are also expected to clock in and out for a 30-minute lunch break. At the end of the work day Team Members are expected to change out of their uniform and clock out on their way out of the building.

Call Back Pay

If, because of an emergency, you are called back to work after your scheduled work day or work week has ended, you are eligible for either two (2) hours of pay or payment of hours actually worked, with applicable premium pay, whichever is greater.

Errors in Pay

While every precaution is taken to see that paychecks are correct, an occasional error may be made. In the event you feel an error has been made in your pay, report it immediately to your Coach. The Company is anxious to correct any pay errors as quickly as possible.

Funeral Pay

Team Members may have up to five days off in the event of the death of a member in your immediate family, i.e., spouse, child, parent, parent in-law, sister or brother, sister-in-law or brother-in-law, step-mother or step-father, grandparent and grandparent-in-law. You must make arrangements with your Coach to schedule the time off; your Coach will notify payroll of the days that need to be paid. Once the time has been approved, you do not need to call-off.

Jury Duty Pay

In the event that you are called to jury duty or subpoenaed as a witness, the Company will pay for the duration of your service. Team Members who receive notification to appear for Jury Duty must submit the notice to their Coach immediately.

All Team Members, while on jury duty, will be assigned to an 8 or 10 hour shift (based on their normal workday hours) which coincides with the start time of their jury duty assignment - usually around 8:00 am. The reassignment of start time will be for the duration of the jury duty assignment. Upon completion of the jury duty assignment the Team Member will resume their regular shift and schedule as assigned by their Coach.

After confirming their appearance for jury duty a Team Member is required to "call-off". Otherwise, Team Members are expected to report for work as scheduled. The work schedule would be the modified schedule, which coincides with the jury duty start time.

Failure to report to work when not attending jury duty will be considered an absence and will be processed in compliance with the attendance guidelines.

Team Members are required to submit a jury duty time card, which is supplied to jury duty participants by the court. The time card must indicate the date, time clocked in and time clocked out. The time card must be submitted to your Coach for processing of jury duty pay. Jury duty is paid at straight time and the hours are not considered time worked for the purpose of computing overtime pay.

Sick Pay

You will receive 5 sick days at the beginning of each year. These days will be pro-rated to one-day per quarter for Team Members who begin or end employment during the course of the year (1 per quarter).

The pay for each day of sick leave equals standard straight-time basic hourly rate (8 or 10 hours). Sick days/hours not used will be paid out on the last pay period of the year.

PREMIUM PAY

You are eligible for pay in addition to your regular earnings which is called premium pay. These opportunities are summarized below.

- **Holiday Premium Pay**

Holiday hours are paid at your regular hourly rate of pay (8 or 10 hours), provided that you have worked 80% of your scheduled shift of your last scheduled day before and after the holiday. If you are scheduled to work on the holiday and are absent on the holiday you will not qualify for holiday pay. If you are scheduled to work on the holiday you will be paid a premium of one and one-half of your regular rate of pay for the hours worked.

- **Overtime Premium Pay for a 5- Day, 8- Hours Per Day Workweek**

A premium of half your regular hourly rate in addition to your regular rate is paid for work in excess of eight (8) hours a day or 40 hours per week, whichever is greater. A premium of one (1) times your pay in addition to your regular rate will also be paid for all hours worked over 12 in one day. Also, a premium of one (1) times pay in addition to your regular rate for all work over eight (8) hours on the seventh (7th) consecutive work day in any work week will be paid.

- **Overtime Premium Pay for a 4 – Day, 10 - Hours Per Day Workweek**

A premium of half your regular hourly rate in addition to your regular rate is paid for work in excess of ten (10) hours a day or 40 hours per week, whichever is greater. This premium is paid for the first eight (8) hours. Thereafter, a premium of one (1) times pay in addition to your regular rate for hours worked over eight (8) hours in a day will be paid.

- **Report-In Premium Pay**

In case of a major production change, the Company guarantees you a minimum of either four (4) hours' work or equivalent pay to compensate for your expense of actually reporting to work. A Team Member who has worked his/her last regularly scheduled shift, and who reports for work without having been notified that there will be no work available on his/her regular job, shall be paid four (4) hours at his/her regular rate. It is understood that the guarantee of four (4) hours work or four (4) hours pay will not apply when the Company could not reasonably have foreseen an event such as work stoppages, major breakdowns, or mechanical or power failures, resulting in the shutdown of a department or the Plant. Team Members may be notified not to report for work either before leaving the Plant on their preceding shift or by telephone, or visitation by Company representative prior to the time they customarily leave their homes for reporting to work. Messages from a Company representative left on answering devices will be construed as "being contacted".

- **Shift Premium Pay**

A premium of 30 cents per hour is paid for all Team Members who are assigned to and work a 2nd shift. Second shift is considered a start time of Noon or later. A premium of 40 cents per hour is paid for all Team Members who are assigned to and work a 3rd shift. Third shift is considered a start time of 8 p.m. or later. Shift premium is included and calculated in your holiday and vacation pay, provided you are assigned to a 2nd or 3rd shift.

Performance Incentive Program (PIP)

The Company provides a discretionary incentive program known as PIP. Details of this plan are provided to Team Members by their Coach, Business Unit / Department Manager or other company leader. Team Members must be current, active employees at the time that the PIP is processed to be eligible for the PIP payout. PIP payout is determined by the achievement level of monthly goals. The target payout for 100% level goal achievement is 5% of earnings from actual hours worked (excludes vacation, holiday, sick, etc...) during the month in which the PIP payout is being calculated.

JOB ASSIGNMENTS

Job Posting/Bidding System

The Company recognizes the importance of getting the best-suited person in each job, and at the same time giving each Team Member as much opportunity and choice as possible concerning the job and shift they wish to work. In order to help the Team Member in this process, a job posting system has been established and is administered by the People Support Department. The job posting system has been established to cover the hourly positions within the facility. However, The Company reserves the right, based on special circumstance and at its own discretion, to fill positions outside of the job bidding system.

Additionally, if Team Members are interested in pursuing salaried and/or managerial career opportunities within the facility, it is the responsibility of the individual Team Member to discuss their interest and career aspirations with their Coach, Business Unit / Department Manager and People Support. In addition, these positions are posted and can be applied for directly on ScoopNet.

When a job opening is posted on the bulletin board, it will be for a period of five working days. Sign-up sheets for posted jobs will be kept in the People Support office. A Team Member who does not sign up for the posted job during the five day posting time will not be eligible for the posted job. An exception to this limitation exists when a Team Member has been out of the Plant during the posted period (i.e., vacation) and the job has not yet been filled.

The following job bid procedure applies to all frontline positions except maintenance.

1. Job is posted plant wide. The order of priority for filling the position is:
 - a. The most senior, eligible person on an opposite shift
 - b. Most qualified, eligible bidder within the business unit.
 - c. Most qualified, eligible bidder when it is a promotion
 - i. Promotion is defined as moving into a different pay level.
 - d. Most qualified, eligible bidder when it is a lateral move.
 - e. External hire.
2. Team Members must meet the following criteria to be eligible for a job bid
 - a. Must not have any active* performance issues in personnel file.
 - i. Active is defined according to the policy guidelines in effect at the time of the bid.
 - ii. Currently for performance corrective actions, "warnings" remain active for 6 months.
 - iii. Currently for attendance corrective actions, "warnings" are active for varying periods of time based on the individual's status. It is possible to have an attendance "warning" remain active for up to a year.

- iv. Performance issues are defined as steps taken according to existing policies that an employee must sign. I.e. verbal written warning, written warning, final written warning. It does not include "coaching" or verbal warnings that are made as notes to file.
- b. Must have been in current role for at least two years.
- c. Must be able to move to new role/shift within 2 – 4 weeks.

3. "Qualified" Description

- a. Ranking system score consists of 5 factors each factor is equivalent to 20 points
 - 1. Qualifications
 - 2. Seniority
 - 3. Performance Evaluation
 - 4. Interview
 - 5. Engagement

4. Selection Process

- a. Following the priority order in section 1 above, the top 3 most qualified candidates are identified and narrowed down to one through a selection discussion.
 - i. Selection discussion is defined as an "interview". The top 3 bidders will be interviewed by the receiving department, preferably by a team consisting of coach, Unit Manager and a team member to select the top candidate of the three to move on to the next step.
- b. "Day in the Life" experience offered to the most qualified bidder as described above.
 - i. This experience should be 1 – 5 days (max) in length.
 - 1. The length of the Day in the Life experience will be determined based on the circumstances of the candidate and/or bid. Some may need 1 day, some may need 5. Days will not necessarily be consecutive but must be completed over no more than a two week period.
 - 2. Ideally, interested bidders will have sought opportunities to "explore" another position or area prior to a bid. Team Member should be encouraged and enabled to work in areas they have an interest in learning the skills for or potentially moving to in the future.
 - ii. Bidder is evaluating the fit of the role for him/herself in order to make an "accept" or "reject" position decision.
 - iii. The team where the position is being filled is evaluating the fit as well.
 - iv. Either the bidder or the receiving department can determine not to move further in the process after the "Day in the Life" experience.
 - v. If both are satisfied it is a good fit, the bidder is offered the position.
 - vi. If for some reason a determination is made that it is not a good fit, the process begins over with the next most qualified person of top 3 identified in Step 4a above.

- c. Bidder accepts or rejects position
 - i. If after following all steps in 4.b. for each of three "most qualified" candidates the position is not filled, the same process is applied to the next priority group identified in section 1.
 - d. The receiving department provides specific feedback to candidates not selected.
 - e. Movement is scheduled to take place
5. On boarding Review process
- a. Standard 30-60-90 Day process utilized
 - b. No voluntary step-down will be permitted. In some cases, Individuals will be moved back into an entry level position with the corresponding entry level pay if they are not able to learn the skills required for the position they moved into based on 30-60-90 day process.

Overtime Assignments

The Company operates an ice cream manufacturing facility to produce products for public consumption. The Company must meet production schedules based on its customer's demand for these products. As such, the production schedules are subject to change and overtime assignments may become necessary. Whenever possible, overtime assignments will be handled by using volunteers (by most senior qualified). When we cannot cover the required staffing levels through volunteers, the Company may assign personnel to work overtime. Qualifications will always be considered when assigning overtime and, whenever possible, seniority. However the Company reserves the right, in its sole discretion, to assign overtime work as it sees fit in order to balance the overtime workload amongst team members as well as for safety related reasons.

Reduction in Workforce

The Company produces product based on customer demands. As a result our workforce may need to be adjusted to fit the demand for our products.

When the demand for product is reduced we will evaluate the anticipated length of time that the line (s) will be scheduled down and the number of employees impacted.

- If the anticipated down-time is 2 weeks or less the employees working on the specific line (s) will be scheduled off.
- If the anticipated down-time is more than 2 weeks we will assign the impacted employees to another line within or outside of the current business unit based on seniority and qualifications.
- In the event that the line is scheduled down for more than 2 weeks and we are overstaffed we will ask for volunteers to be scheduled off, provided that there are not any temporary employees working, otherwise, temporary employees will be scheduled off first.
- Once we exhaust the volunteer list we will schedule people off based on seniority (least senior) and qualifications.

Job Elimination

The Job Elimination Procedure will be followed as soon as a position is eliminated. When a reduction in work force occurs due to job elimination, we will allow Team Members to displace into entry level positions, or into jobs that they have held and have been "qualified/trained" to perform, provided they can hold seniority. A Team Member cannot displace to a higher level position. Entry level positions are ICM I, Waste/Reclaim or Palletizer. Should the position eliminated become open the Team Member (s) displaced will be provide with an opportunity to return to the position, this will be a one time offer.

Consideration for displacing will be given to the levels affected in the affected team only. Levels are defined by the Progression Pay System.

The most senior Team Member will be given the opportunity to displace a less senior Team Member within their level or at an entry level.

The Team Member displaced will then be given the same opportunities provided to the Team Member who displaced him/her.

The displacement can be within their team or throughout the Plant, provided the aforementioned requirements have been met.

Red Circled

If a Team Member, due to job elimination, is placed in a position at a lower salary level, that Team Member's pay will be "red circled". This means that there will be no change to the Team Member's pay rate, despite the fact that the Team Member is in a lower pay level. The Team Member's pay rate will remain at the current level until the time when the established pay rates for that level exceed the Team Member's pay rate or the Team Member is offered a similar position to the one eliminated and they refuse the offer. Refusing an offer of equal pay will place the Team Member at a pay rate equivalent to the job they are performing. If a Team Member subsequently bids voluntarily into another position and is accepted the Team Member will be paid at the appropriate rate for that position.

Qualifications:

You must be signed off on the job in question and you must have performed the ICM I or equivalent job in the past 12 months. ICMII or equivalent jobs must have been performed in the past 6 months in order to be considered qualified.

Returning to work will be based on level, seniority and qualifications (most senior qualified).

Line Down

A line down is defined as excused time away from work due to the fact that we are not running specific lines and are overstaffed. Employees may elect to be paid benefit hours (sick time/floating holiday/vacation) to cover their pay for the line down. If an employee is taking a line down and electing benefit hours to cover their pay they must complete the Benefit Hours form which requires their coach's signature and it must be submitted to payroll prior to the pay period ending date.

HOURS OF WORK POLICY (HOW)

The purpose of this policy is to define the maximum working time limits as they apply to all Dreyer's hourly employees and to provide a means to assure Dreyer's and its employees maintain compliance with all applicable Dreyer's hours of work regulations.

All Dreyer's hourly Employees are subject to the following HOW regulations:

- A. Hourly Employees may not work for more than 72 hours in any given work week; a work week is from Sunday through Saturday.
- B. All Hourly Employees will receive 1 day of rest after working 6 consecutive days or 2 consecutive days of rest during a 14 day period.
- C. In situations where a local law on HOW exists we will comply with the law by adhering to which ever is more restrictive; the law or the policy.

Hours of Work (HOW) Responsibilities

- A. Dreyer's hourly Employees are responsible for:
 - 1. Working within the HOW policy.
 - 2. Maintaining accurate hours of work by accurate time cards.
 - 3. Promptly reporting any potential HOW deviation that may occur to their manager.
- B. Managers are responsible for:
 - 1. Ensuring all Dreyer's hourly Employees understand and comply with the HOW policy.
 - 2. Confirming HOW compliance through payroll and/or Kronos reports.
 - 3. Investigating and applying appropriate corrective measures for deviations.
- C. People Support Managers are responsible for:
 - 1. Conducting periodic site audits to provide local and Senior Management with updates on policy compliance.
 - 2. Ensuring management is taking appropriate corrective measures in response to deviations, as directed by this policy.

ICE CREAM AGREEMENT
BETWEEN
GENERAL TEAMSTERS AND FOOD PROCESSING
LOCAL NO. 87
AND
CARNATION COMPANY, BAKERSFIELD ICE CREAM PROCESSING FACILITY

p1/F/CNT2/082688

AGREEMENT

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
1. Agreement	1
2. Recognition	2
3. Team Concept	3
4. Management - Union Cooperation	3
5. Nondiscrimination	3
6. Management of Operation	3
7. Performance of Work	4
8. Training	4
9. Physical Examination	5
10. Probation	5
11. Strikes and Lockouts	5
12. Seniority	6
13. Job Functions	7
14. Grievance and Arbitration	7
15. Hours of Work	8
16. Breaks and Lunch	9
17. Shift Premium	9
18. Seasonal/Part-Time Employees	9
19. Holiday	10
20. Vacations	11
21. Jury Duty	12
22. Funeral Leave	12
23. Leaves of Absence	12
24. Supplemental Disability	13
25. Group Health Insurance	14
26. Union Representation and Visits	17
27. Pension Benefits	17
28. Uniforms	17
29. Discipline - Terminations	18
30. Successors and Assigns	18
31. Waiver	18
Term of Agreement	19
Appendix A	20
Summary of Important Points	24

Official Exhibit No.

31RC-066625 E-1

Disposition
ReflectedIdentified
Received

IN THE MATTER OF:

NESTLE

Date: 10-27-11

Witness: M. C. FADAN

Reporter: [Signature]

No. Pages: 22

ICE CREAM AGREEMENT
BETWEEN
GENERAL TEAMSTERS AND FOOD PROCESSING,
LOCAL NO. 87
AND

CARNATION COMPANY, BAKERSFIELD ICE CREAM PROCESSING FACILITY

THIS AGREEMENT is between the Dairies Division of Carnation Company, Ice Cream Processing Facility, 7301 District Blvd., Bakersfield, California, hereinafter called the "Company" and General Teamsters and Food Processing Local No. 87, hereinafter called "Union." It is hereby agreed by the parties that the terms of this Agreement are as follows:

ARTICLE 1 RECOGNITION

- Bargaining Unit*
- 1.1 The Company recognizes the Union as the sole bargaining representative for all hourly production, maintenance and materials team members at the plant but specifically excluding all office and plant clerical, security, team coordinators and other Supervisory Personnel as defined in the Act, resource specialists and information automation services.
- Joining Union*
- 1.2 It shall be a condition of employment that all employees of the Company covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing, and those who are not members on the effective date of this Agreement shall immediately after the thirtieth (30th) day following the effective date of this Agreement become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall immediately after the thirtieth (30th) day following the beginning of such employment become and remain members in good standing in the Union. A member in good standing shall be defined as an employee who tenders the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership in the Union.
- Dues*
- 1.3 Upon the submission of signed authorization by an employee, the Company shall deduct from the first paycheck of each month the amount of regular Union dues for that month. This authorization shall include initiation fees which may be paid through payroll deductions over the first four (4) paychecks. It shall be the obligation of the Union to compile a list of employees who have signed such authorizations, and to furnish such list to the Company, together with the authorizations, and to notify the Company of changes in the list, as they occur, for the purpose of keeping the list current. Such amounts shall be transmitted to the Union within thirty (30) days following the date that deductions are made.

- 1.4 If any employee is not in good standing with the Union, as provided herein, and the Union so notifies the Company in writing, the Company will discharge such employee within seven (7) days thereafter. The Union shall indemnify and save the Company harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of this action.
- 1.5 The Company agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to DRIVE. DRIVE shall notify the Company of the amounts designated by each contributing employee that are to be deducted from their paycheck. The Company shall transmit to DRIVE National Headquarters on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's social security number and the amount deducted from the employee's paycheck.
- 1.6 The Company agrees to notify the Union in writing within seven (7) days from the date of first employment of any employee subject to this Agreement of the name of such employee, his social security number, the position for which employed, and the date of first employment.
- 1.7 The Company may hire qualified persons from any source. Such persons shall make application for and complete Union membership subject to this Section.

ARTICLE 2 TEAM CONCEPT

- 2.1 The purpose of this Article is to help establish a working framework within which an organizational system, which shall hereinafter be referred to as "Team Concept," can be developed and sustained and will ensure an efficient and competitive operation thus providing meaningful work and job satisfaction for employees which may be referred to as "Team Members".
- 2.2 The parties recognize that the Company, at its sole discretion, may establish work groups, which may be referred to as "Teams". The composition, number, and job duties shall also be at the Company's sole discretion.
- 2.3 It is further agreed that the Company retains the sole and exclusive right to manage the Team Concept which shall include allowing Teams to self-manage within stated parameters established by the Company.
- 2.4 Both the Company and the Union support and encourage policies and practices that will reflect their commitment to the Team Concept. Therefore, it is understood that recommendations such as, but not limited to; discipline, member acceptance, work assignments, layoffs, work sharing in lieu of layoffs, shifts, hours of work, breaks, and training, made by team members and accepted by the Company shall supersede any applicable Article in this Agreement.

ARTICLE 3

MANAGEMENT - UNION COOPERATION

- 1/2/11/19/93*
social contracts
- 3.1 The Company and the Union agree to meet on not less than quarterly basis to review and discuss the progress of the team concept, as referred to in Article 2. The Company shall inform the Union of team decisions relating to discipline, promotions, reductions, hours, meetings, training, etc., etc. The Union shall have an opportunity to investigate and/or make suggestions or comments in these areas.
- 3.2 The Union shall have a business representative at these meetings and the Company shall have a member of the Corporate Employee Relations staff at these meetings. Others may attend as determined by the parties.

ARTICLE 4

NONDISCRIMINATION

- 4.1 The Union and the Company agree to abide by Company policy and applicable state and federal law to the effect that no applicant nor employee will be discriminated against by reason of race, religious creed, color, national origin, age, sex, Vietnam era veterans, or handicap status.
- 4.2 It is further agreed that nothing in this Agreement shall prevent the Company from fulfilling the goals and commitments of its Affirmative Action Plan.
- 4.3 In the interest of simplification, masculine gender shall include the feminine gender throughout this Agreement whenever the context so requires.

ARTICLE 5

MANAGEMENT OF OPERATION

- 5.1 The management of the plant and the direction of the working forces shall be vested exclusively in the Company. These rights shall include but not be limited to the right to plan, direct and control the Company's operation, the right to hire, lay off, discharge, promote, demote or transfer its employees, the right to exercise discipline in the interest of good performance and proper conduct, the right to determine the number of persons to be employed in any work, the right to determine schedules of production, to introduce new or improved methods, to modify, adjust or terminate the team concept, the right to sub-contract work, and the right to make such reasonable rules relating to operation, conduct, attendance, and safety as the Company shall deem desirable, subject to the provisions of this Agreement.

5.2 *Perf. pay* The Union will not encourage, aid or condone action or inaction on the part of any employee interfering with the objective of achieving the highest level of employee performance and efficiency.

5.3 The Company and the Union may agree to change the type and hours of work and rate of pay of any employee who, because of physical disability, is unable to accomplish a satisfactory day's work.

ARTICLE 6 PERFORMANCE OF WORK

6.1 Team coordinators, resource specialists, and other non-bargaining unit employees shall not regularly perform bargaining unit work. However, performance of such work as defined below, shall not constitute a violation of this Agreement:

- a. Training or instruction;
- b. Substituting due to an inadequate number of bargaining unit team members being readily available, not to exceed two (2) hours. During this period the Company shall attempt to call in a bargaining unit team member;
- c. Maintaining a proper rate of production;
- d. Avoiding loss of product or damage to equipment;
- e. Investigation of problems relating to equipment or process;
- f. Responding to an emergency.

ARTICLE 7 TRAINING

7.1 *non barg. emp.* Company employees not covered by this Agreement shall be permitted to receive training on bargaining unit jobs provided the bargaining unit employee is directly involved in such training or is not displaced.

7.2 Employees covered by this Agreement may be selected to receive training on selected non-bargaining unit jobs. Should a Bargaining Unit employee be so assigned they shall continue to receive their current rate of pay and benefits under this Agreement for the entire period of training. The Union agrees that such work involved in this training shall not become Bargaining Unit work by virtue of this training.

ARTICLE 8 PHYSICAL EXAMINATION

- 8.1 The Company may require any applicant to submit to a physical and medical examination, which may include a Drug/Alcohol screen. The Company shall not be required to employ anyone found by this examination to have the presence of Drug or Alcohol, or who is not physically fit to perform the job.
- 8.2 The Union hereby agrees with the Company's Drug and Alcohol Policy.
- 8.3 The Company may require any employee to submit to physical and medical examination, which may include reasonable suspicion Drug/Alcohol screening, at the expense of the Company by any medical practitioner chosen by the Company and the Company shall not be required to employ or retain in its employment anyone found by this examination not to be physically fit to perform any job within the Bargaining Unit.

ARTICLE 9 PROBATION

- 9.1 All new team members shall serve a probationary period of one hundred twenty (120) calendar days before they become regular team members. During the probationary period of employment, the Company may, at its discretion, terminate such team members. Such termination shall not be subject to the grievance procedure.
- 9.2 Upon completion of the probationary period, seniority shall commence as of the team member's date of hire.

ARTICLE 10 STRIKES AND LOCKOUTS

- 10.1 The Company agrees there shall be no lockout during the term of this Agreement.
- 10.2 The Union agrees they will not authorize any strike, work stoppage, slowdown, sympathy strike, walkout or other activity that tends to disrupt normal operation during the term of this Agreement.
- 10.3 Neither team members nor the Union shall engage in or provoke or encourage in any way a strike, as defined in this Article, against the Company during the term of this Agreement.
- 10.4 In the event of unauthorized strike, the Union shall undertake every reasonable means to induce team members to return to their jobs. Failure to do so shall result in their being financially liable for resulting losses suffered by the Company.

- 10.5 Any team member who violates this No Strike Provision shall be subject to discharge or other disciplinary action as determined by the Company.

ARTICLE 11 SENIORITY

- 11.1 Upon completion of the probationary period, seniority shall commence as of the team member's date of hire. If length of service is identical, the team member with the lower last four (4) digits in his Social Security number shall be considered the more senior.
- low 0
high 9*

- 11.2 A team member's seniority shall be terminated for any of, but not limited to, the following reasons:

- a. If the team member resigns.
- b. If the team member is discharged for just cause.
- Seniority* c. If a team member is laid off for six (6) consecutive months or more.
- d. The team member fails to return to work upon expiration of leave of absence, or the team member accepts other employment or engages in another business occupation while on approved leave of absence.

- 11.3 Seniority shall govern in layoff and recalls, when qualifications are equal.

- 11.4 If the number of memberships in a team is to be reduced, the team members in that team with the least plant seniority will be released from the team first. The employees who are so released from the team shall then displace the least senior employee in the plant whose job they are capable of performing. Employees displaced by this provision shall then exercise their seniority in the same manner, if applicable.
- Letter of
displacement
1/18/90*

- 11.5 Team openings shall be communicated to employees. Employees who express an interest shall be interviewed by selected team members of the team where the opening exists. The team shall recommend the eligible applicant they feel best suits their team requirements.
- Posting Notices*

- 11.6 The Company shall have sole discretion to determine a team member's qualifications and eligibility. Eligibility may include but shall not be limited to attendance, performance, level of training, adherence to rules, productivity and disciplinary history.
- eligibility
for transfer*

- 11.7 Team members shall enter a team at a job function level determined by the Company.

ARTICLE 12 NEW JOB FUNCTIONS

- 12.1 Should the Company, during the term of this Agreement, establish additional job functions then those listed in Appendix "A," it agrees to negotiate the Wages and Conditions of such jobs with the Union.

ARTICLE 13 GRIEVANCE AND ARBITRATION

*Judicial
Review
Board*

- 13.1 Should any disagreement arise as to the interpretation or application of any of the Articles or provisions of this Agreement, such disagreements shall first be presented through the Judicial Review Board available to all members.
- 13.2 Any disagreement settled under any step hereof shall be final and binding on both parties and the affected team member.
- 13.3 Any disagreement that is not settled in the above manner may be pursued as follows;

STEP I

Any grievance may be referred to the Plant Manager or the Plant Manager's designee by the team member. To be considered at this step, the grievance must be presented within five (5) days of the decision of the Judicial Review Board. The Business Agent, the Human Resource Manager or his designee, and/or a representative of the Corporate Employee Relations Department may be present at the meeting.

STEP II

If the grievance is not settled in Step I, it may be referred to arbitration as hereinafter provided. Either the Union or the Company may demand arbitration of the grievance by serving upon the other a demand therefore within seven (7) days.

Upon demand for arbitration, both parties shall immediately petition the Federal Mediation and Conciliation Service for the names of five (5) arbitrators, and from that list the two parties shall select one (1) name from it by alternately crossing off a name until one (1) remains. This process for selecting an arbitrator need not be followed if both Parties agree on any person as impartial arbitrator. The grievance then shall be presented to the arbitrator and his decision shall be final and binding on both Parties. Charges submitted by the arbitrator shall be borne by the losing party.

- 13.4 Any arbitrator hereunder shall have power only to interpret or apply the provisions of this Agreement and shall not have the power to alter the specific provisions hereof or to make new or additional provisions of this or any succeeding Agreement.
- 13.5 Any grievance submitted to arbitration may be settled by the parties prior to the arbitration hearing or withdrawn from the arbitration process by the party submitting the grievance to the Step II procedures.
- 13.6 Any modification, application, or decision by Management pertaining to organizational styles including the composition and size of the teams, with respect to the Team Concept is not subject to this Article.

ARTICLE 14 HOURS OF WORK

- 14.1 Any five (5) days of work within the Calendar Week shall be straight time workdays. Any time worked in excess of eight (8) paid hours in any one (1) day shall be overtime and paid for at the rate of one and one-half (1-1/2) times the basic hourly rate. Any time worked in excess of twelve (12) paid hours in any one (1) day shall be overtime and paid for at the rate of two (2) times the basic hourly rate. Scheduled check in time will determine the workday.

- 14.2 *40 HR WEEK* Non-Probationary employees shall be offered forty (40) hours of work in each regular workweek. This provision shall not apply in cases where the lack of work is a result of an act of God, emergency, breakdown, discipline or starting work date of employee. Additionally, the Company and Union may, by mutual agreement, permit regular employees to work less than forty (40) hours per week.

- 14.3 *call back pay* When an employee has completed his regular shift, left the premises and then is notified to return to work, such employee shall receive a minimum of two (2) hours pay at the applicable overtime rate. This Section shall not apply in cases where the employee is called back for hours that are continuous with the employee's regular shift.

- 14.4 *4 hr pay* Employees who report to work as scheduled and no work is provided shall receive four (4) hours straight time pay. This Section shall not be applicable in the event the Company is unable to provide work due to circumstances beyond its control.

- 14.5 By mutual agreement between the Company and a majority of the affected employees, a workweek of four (4) ten (10) hour days may be established. If established, overtime premium shall be applicable after ten (10) hours per day and forty (40) hours per week. Benefits for employees working a workweek adjusted to accommodate the ten (10) hour per day system shall be the same.

ARTICLE 15 BREAKS AND LUNCH

- 15.1 All employees shall be provided two (2) fifteen (15) minute breaks in each regular workday. One such break shall be during the first half of the work shift and the other during the last half of the work shift.
- 15.2 All employees shall be provided with an unpaid thirty (30) minute lunch period each workday. Lunch schedules shall be determined by team and operating requirements.

ARTICLE 16 SHIFT PREMIUM

- 16.1 Employees shall receive a twenty five cents (25¢) per hour premium for each full hour worked between 6 p.m. and 6 a.m. If an employee works six (6) or more hours between 6 p.m. and 6 a.m., they shall receive the shift premium for the entire shift.
- changed
120 hrs
6 into 600*

ARTICLE 17 SEASONAL/PART-TIME EMPLOYEES

- 17.1 The Company may hire as many seasonal or part-time employees as it deems necessary in order to handle any seasonal fluctuation in production, lunch and break relief, vacations or absenteeism. The following conditions shall apply to those who are hired as such an employee;
- a) Such employees shall not acquire seniority unless they are retained in excess of the probation period.
 - b) Such employees may be regularly scheduled for less than eight (8) hours per day.
 - c) All such employees must become members of the Union as provided in this Agreement.
 - d) Pension benefits outlined in this Agreement shall apply.
 - e) They shall be paid the rate of Level I.

- f) No other provisions of this Collective Bargaining Agreement shall apply to this group of employees.
- g) Such employees shall work solely at the direction of the Company and they may be terminated at the Company's sole discretion.

ARTICLE 18 HOLIDAYS

- 18.1 The Company shall recognize the following days as holidays for all eligible employees:

New Year's Day	Veteran's Day
Washington's Birthday	Thanksgiving Day
Memorial Day	Day after Thanksgiving Day
Independence Day	Christmas Day
Labor Day	

- 18.2 When one of the above holidays falls on Sunday, it shall be observed on Monday.

- 18.3 Should one of the above holidays fall during an employee's vacation or a plant shutdown, such employee, if otherwise eligible, shall receive holiday pay.

- 18.4 If an employee is required to work on any of the above holidays, they shall receive eight (8) hours holiday pay at their regular straight time hourly rate in addition to one and one-half (1-1/2) times their straight time rate of pay for all hours worked on that day. *2 1/2?*

*work on
a Holiday*

- 18.5 If an employee is not scheduled to work on one of the above holidays, they shall, if otherwise eligible, receive eight (8) hours holiday pay as provided in this section.

- 18.6 Employees shall be considered eligible for holiday pay if they meet all of the following requirements:

- a. They work all scheduled hours on the regularly scheduled day prior to the holiday.
- b. They work all scheduled hours on the next regularly scheduled day following the holiday.
- c. If required to do so, they work all scheduled hours on the holiday.
- d. They have completed the Probation Period. (This provision shall not apply to employees hired in 1988.)

- e. An employee not present at work as required in items a, b and c above shall still be eligible for holiday pay if he presents a medical certificate, acceptable to the Company, upon his return to work, provided the employee has worked a minimum of two (2) days in the calendar week in which the holiday falls.

ARTICLE 19 VACATIONS

- 19.1 Eligible employees shall receive the following vacation benefits:

<u>Years of Service</u>	<u>Number of Week's Vacation</u>
1	2
5	3

- 19.2 A new employee shall be entitled to his initial vacation when he completes twelve (12) consecutive months of employment and has worked eighteen hundred (1,800) hours. Once the initial vacation has been earned it must be taken between the date earned and December 31 of that year unless a written extension is granted by the Company. *includes OVERTIME*
- 19.3 After earning an initial vacation, an employee shall thereafter earn vacation on January 1 of each calendar year. The vacation amount earned shall be determined by the amount of hours the employee worked in the preceding calendar year. Employees shall be entitled to a full vacation, provided the employee works eighteen hundred (1,800) hours in the preceding year. In the event an employee works less than the required hours for a full vacation, the amount of vacation will then be determined on a prorated basis by comparison of hours worked and eighteen hundred (1,800) hours. *Due to take Jan 1st/4 TC*
- 19.4 It is further agreed that in determining eligibility as outlined in 19.2 and 19.3 above the eighteen hundred (1,800) hours shall include all straight time and overtime hours paid for.
- 19.5 A full week's vacation pay shall be forty (40) hours at the employee's straight time hourly rate.
- 19.6 The Company shall have the right to require employees to use one (1) week of their annual vacation during a scheduled plant shutdown. In such cases, the Company shall notify employees of the shutdown by March 1 of each year. *See 19.5*

- 19.7 Earned vacations that are not required to be taken during scheduled shutdowns shall be scheduled by the Company based on employee requests determined by seniority and operating requirements. Vacation schedule sheets will be available on January 1, and will be finalized on April 15 of each year.

ARTICLE 20 JURY DUTY

- 20.1 The Company shall reimburse any regular employee for loss in wages, up to a maximum of ten (10) working days, caused by such employee reporting for or performing jury duty. An employee called for jury duty need not report for work on that day, unless he is excused in time to put in at least four (4) hours of work. *Hours for jury duty are counted as hrs. worked. If +END time, pay 8 1/2 x 2 1/2 x.*
- 20.2 No employee shall be required to work a scheduled shift starting after 7:00 p.m. on a day before a day on which he is required to report for jury duty.
- 20.3 Employees are required to notify the Company in advance of jury duty service and to provide proof of such service.

ARTICLE 21 FUNERAL LEAVE

- 21.1 An employee who has completed the Probation Period and who loses time on scheduled work days on account of the death of a member of his immediate family will be paid up to three (3) days (each day at eight (8) straight time hours) for working time lost as a result of making arrangements for and attendance at the funeral. For the purpose of this paragraph, a member of an employee's immediate family is defined as husband, wife, brother, sister, father, mother, son, daughter, mother-in-law or father-in-law, grandparents and grandchildren, stepfather, stepmother, or stepchildren. *EVERY WORKING DAY 4/1/11*

ARTICLE 22 LEAVE OF ABSENCE

- 22.1 A leave of absence without pay may be granted for reasons satisfactory to the Company.
- 22.2 A leave of absence for medical reasons may be granted provided the employee presents medical verification satisfactory to the Company.
- 22.3 Personal leaves (other than illness or emergency) without pay may be granted upon written request. The decision in each request shall be based on the nature of the request and operational requirements.

6000 P. 87
COMMITTEE

22.4 Conditions of all leaves of absence shall be in writing if the duration will exceed five (5) working days and the duration shall not normally exceed one (1) month. Under exceptional circumstances the Company may extend the leave in writing, for additional one (1) month periods. The Union shall be given copies of all leaves of absence. *copy 87*

22.5 A leave of absence shall not be granted for attempting other employment, including any form of self-employment.

22.6 Failure to report to work at the conclusion of a leave of absence or any extension thereof, or securing a leave of absence for false reason, shall result in termination.

22.7 The seniority of an employee who is on leave of absence, in accordance with this Article, shall continue to accumulate, during the period of the leave.

ARTICLE 23 SUPPLEMENTAL DISABILITY

23.1 Eligible employees shall be entitled to supplemental disability for periods of absence caused by personal accident or illness or in the event of an on-the-job injury.

23.2 Eligibility Requirements

To be eligible for supplemental disability an employee must meet all of the following eligibility requirements:

- a. Must have been employed for twelve (12) months.
- b. Must be eligible for payment under Workers Compensation or State Disability for each week in which Supplemental Disability is claimed.
- c. Must complete a disability application which shall include medical verification.

23.3 Benefit Schedule:

- a. For the first five (5) working days missed as result of a medically verified accident or illness, there shall be no supplemental benefit.

- b. For each full week of absence thereafter, the eligible employees shall receive \$50.00 per week over and above the applicable Workers Compensation or State Disability.
- c. After the five (5) working day waiting period, partial weeks shall be payable at the rate of ten dollars (\$10) per working day. *WORKING DAYS MON-FRI*
- 23.4 Employees must submit proof of Workers Compensation or State Disability payments to receive any benefits under this plan.

ARTICLE 24 GROUP HEALTH INSURANCE

24.1 All eligible employees who have completed a ninety (90) day waiting period starting the first day of the month following employment, and their eligible dependents, will be provided with a comprehensive insurance program that covers medical visits, hospitalization, surgery, dental and life insurance. Employee and dependent eligibility requirements are covered in the booklets provided by the Company. Other requirements and conditions are contained in the Letter of Understanding regarding summary of important points.

24.2 Following is an outline of benefits provided:

SUMMARY OF BENEFITS (For Team Members and Dependents)

SUMMARY OF GROUP INSURANCE BENEFITS BAKERSFIELD ICPF

TERM LIFE INSURANCE

24-hour coverage - For Team Members Only \$10,000.00

ACCIDENTAL DEATH & DISMEMBERMENT INSURANCE

For Team Members Only \$10,000.00

TERM LIFE INSURANCE - For Dependents

Spouse \$ 3,000.00
Each Eligible Child under 19 years of age \$ 1,500.00

CARNATION FUNDED

COMPREHENSIVE MEDICAL - For Team Members and Dependents

Maximum Lifetime Benefit per Individual \$500,000.00

Maximum Lifetime Aggregate Benefit Per Individual
for Psychiatric Treatment,
Alcoholism and Drug Abuse

\$ 25,000.00

The Plan pays for the Usual and Customary charges
for a Covered Medical Expense as follows:

Deductible Per Calendar Year

(Except Prescription Drug Benefit)

Per Individual\$ 100.00
Per Family\$ 300.00

**In-Patient Psychiatric Treatment, Alcoholism and
Drug Abuse (Note: If confined in a hospital for
treatment, see Hospitalization Benefit)**

For charges resulting from Psychiatric Treatment,
Alcoholism and Drug Abuse while the Team Member or
Dependent is confined in a treatment center and
which are in excess of the Deductible, the Plan
pays at the rate of

50%

Maximum Per Calendar Year \$ 5,000.00

**Out-Patient Psychiatric Treatment, Alcoholism
and Drug Abuse**

For charges resulting from Psychiatric Treatment,
Alcoholism and Drug Abuse while the Team Member or
Dependent is not confined in a hospital or treatment
center and which are in excess of the Deductible,
the Plan pays at the rate of

50%

Maximum Per Calendar Year \$ 1,000.00

**Chiropractic Treatment Expenses in excess of the
Deductible are payable in a calendar year at the
rate of**

80%

Maximum Per Calendar Year \$ 1,000.00

**Prescription Drug Expenses, dispensed by a
pharmacist are payable, with no Deductible,
at the rate of**

85%

**Out-Patient Ambulatory Surgery and Diagnostic
X-Ray and Laboratory Testing expenses which are
in excess of the Deductible are payable at
the rate of**

100%

**All Other Covered Medical Expenses --
the Plan will pay the first \$3,000 for Covered
Medical Expenses in excess of the Deductible
during the Calendar Year at the rate of**

85%

**Thereafter, the Plan pays for the Balance of
that Calendar Year at the rate of**

100%

DENTAL - For Employees and Dependents

Maximum Benefit Per Individual
Per Calendar Year..... \$1,500.00

Maximum lifetime Benefit for Orthodontics Per
Dependent Child Under 19 years of age.. \$1,000.00

Deductible Per Calendar Year
Per Individual..... \$ 25.00
Per Family..... \$ 75.00

The Plan pays the Usual and Customary Charges for a Covered
Dental Expense as follows:

Preventive Expenses are payable in a Calendar
Year after the Deductible at a
rate of..... 100%

Restorative, Periodontics and Oral Surgery
are payable in a Calendar Year after the
Deductible at the rate of..... 80%

Dentures, Bridges, Gold Inlays, Gold Fillings, and
All Crowns are payable in a Calendar Year after
the Deductible at the rate of..... 50%

Orthodontia Treatment of a Dependent Child
under 19 years of age is payable in a Calendar Year
after the Deductible at the rate of..... 100%

VISION CARE EXPENSES - For Team Member and Dependents

Vision Care Expenses are payable in a Calendar
Year after the Deductible at the
rate of \$100% of Schedule

Deductible Per Calendar Year
Per Individual\$ 10.00
Per Family\$ 30.00

ARTICLE 25

UNION REPRESENTATION AND VISITS

- Memo
issued
12/90*
- 25.1 The Secretary-Treasurer and Business Agent of the Union will be admitted to the plant with the permission of plant management at reasonable times to assist in and observe the administration of the contract. This privilege will be observed so as not to interfere with the normal operation of the plant.

ARTICLE 26

PENSION BENEFIT

- Refer to
Lacey*
- 26.1 The Company shall pay into the Western Conference of Teamsters Pension Trust a sum computed as follows:

A. Per hour of work for each compensable hour.

Effective January 1, 1989

\$.28 per hour

Effective January 1, 1991

\$.40 per hour

- 26.2 For the purpose of this agreement all compensable hours shall be counted as hours worked up to a maximum of one hundred seventy three (173) per month.
- 26.3 The Company shall not be obligated to make payments into the Trust Fund of amounts in excess of those which are deductible from gross income by Company under Section 404 of the Internal Revenue Code.
- 26.4 The total amount due for each calendar month shall be remitted in a lump sum not later than the 20th day of the following month. The Company agrees to abide by such rules as may be established by the Trustees of said Trust Fund to facilitate the prompt and orderly collection of such amounts, and the accurate reporting and recording of such amounts paid on account of the employees. Failure to make the payments herein provided, within the time specified shall be a breach of this Agreement.

ARTICLE 27

UNIFORMS

- 27.1 Should the Company require employees to wear a specific uniform, the Company shall supply employees with such uniform. This provision shall include appropriate footwear.

- 27.2 The Company shall be responsible for the laundering of uniforms it requires, if any.
- 27.3 Employees are not permitted to leave the premises with the Company uniform.

ARTICLE 28 DISCIPLINE - TERMINATIONS

- 28.1 Actions initiated or approved by the Company which are considered serious discipline shall be reviewed with the Union in a timely manner.
- 28.2 The Company will provide the Union with written notice of all terminations.

*written
notice in*

PROBATIONARY & NON-PROBATIONARY

ARTICLE 29 SUCCESSORS AND ASSIGNS

- 29.1 This Agreement shall be binding upon the parties hereto, their successors, administrators, executors, and assigns. In the event an entire operation is sold, leased, transferred or taken over by sale, transfer lease, assignment, receivership or bankruptcy proceeding, such operation shall continue to be subject to terms and conditions of this Agreement for the life thereof. The Company shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or any part thereof.

ARTICLE 30 WAIVER

- 30.1 The Company and the Union acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

30.2 This Agreement fully and completely incorporates the understanding between the Company and the Union and constitutes the sole and entire Agreement between the parties on any and all matters subject to collective bargaining.

ARTICLE 31 TERM OF AGREEMENT

31.1 This Agreement shall be in effect from Aug 26, 1988 to December 31, 1991, and shall be considered renewed from year to year thereafter unless either party hereto gives written notice to the other of its desire to terminate or modify said Agreement at least sixty (60) days prior to December 31, 1991 or December 31 of any year thereafter.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of Aug 24, 1988.

TEAMSTER LOCAL 87

CARNATION ICE CREAM
PROCESSING FACILITY
BAKERSFIELD, CALIFORNIA

By _____

By _____

LETTER OF UNDERSTANDING

This letter of understanding is between Carnation Company, Bakersfield Ice Cream Production Facility and Teamsters Local 87 and when signed by the parties this Letter of Understanding shall seek to modify the existing contract between the parties.

1. Appendix "A"

Replace present Appendix "A" with the revised Appendix "A" which is attached hereto.

2. Pay For Knowledge

The parties agree that the Pay For Knowledge system as outlined in the contract shall be activated effective November 1, 1989, within the following framework:

- a) Team members are considered to have been trained and demonstrated on their present job and members shall not be permitted to pursue a Pay for Knowledge adjustment on their present job functions.
- b) Members may request a job demonstration to be certified by a Team coordinator or other designated official of the Company, provided the member meets the following conditions:
 - o The member must have a minimum of twelve (12) months of service.
 - o The job function they seek to qualify on is a current job function on their Team.
 - o They have satisfied the training time requirements outlined in Appendix "A".
- c) Team members who are successful in their demonstration shall receive the appropriate hourly increase effective with the next payroll period. These members may not request another demonstration for a minimum of eighteen (18) months.

petition
d) Team members who fail the demonstration may not request another job function demonstration for a six (6) month period following the unsuccessful attempt. The Team Coordinator shall have the discretion to determine if a repeat demonstration is appropriate.

Judicial Review
e) If a member is in disagreement with any decision in regard to the above, it may be pursued through the judicial review and grievance sections of the contract.

This Agreement shall become effective when signed by the parties and shall remain in effect for the term of the present Collective Bargaining Agreement.

On Behalf of
Carnation Company

On Behalf of
Teamsters Local 87

Date

Date

APPENDIX A

BAKERSFIELD ICPP PAY SYSTEMEffective November 1, 1989

1. Team members will be interviewed and assigned to a specific team. During the first 120 days they will be assigned to various job functions on their team.
2. At the completion of the 120 days, they will be assigned to a specific job function on their team. At that time, they shall receive a twenty cents (.20 cents) per hour increase.
3. After this initial assignment, team members shall be afforded training opportunities based on criteria established within the particular team, subject to the direction of the team coordinator.

4. Starting rates:

		* 01/01/90	* 01/01/91
Level 1, 2, or 3	\$ 8.50	\$ 8.75	\$ 9.00
Level 3A	10.15	10.40	10.65
Level 4	11.45	11.70	11.95
Level 4A	12.65	12.90	13.15
Level 5	13.70	14.45	15.20

5. General increases:

Appts for GI are PA100K, PA120, PA52 only changes (mass) screen E1

January 1, 1990 - All levels *(except 5) shall receive a twenty-five cents (.25 cents) per hour increase.

January 1, 1991 - All levels *(except 5) shall receive a twenty-five cents (.25 cents) per hour increase.

*Level 5 shall receive a seventy-five cents (.75 cents) per hour increase on both of the above dates.

The Company and the Union may mutually agree to apply these monies in any manner they deem appropriate.

* THIS WAS TYPED IN BY NESTLE ICE CREAM HUMAN RESOURCES DEPARTMENT

**LEVEL 1
Job Functions**

Packer	Bundler	Supply
Cartoner	Wrapper	Caser
Nut Dispenser	Janitor	Cone Dispenser
Tunnel Oper.	Palletizer	Basic Maintenance
Boxer	Case Packer	Fluid Receiving
Bucket Load	Hostler	Forklift
Checker	Lid Applicator	

Specific Criteria:

1. After the initial job function assignment if a team member receives and completes a demonstration opportunity in this level, the team member shall receive an hourly increase of fifteen cents (\$.15). The team member shall train and/or demonstrate in the job function for a minimum of sixty (60) days before receiving the increase.
2. The maximum amount a team member can earn through training in this level is forty-five cents (\$.45).

**LEVEL 2
Job Functions**

Rec. Warehouse Forklift	Dry Blend	Load Out
Tanker Control	Front End Oper.	Fruit Prep.
Machine Operator	Convocan	Reclaim
Extruline Enrober	Can Forming	
M.R.O. Warehouse Stock Clerk		

Specific Criteria:

1. After the initial job function assignment if a team member receives and completes a demonstration opportunity in this level, the team member shall receive an hourly increase of twenty cents (\$.20). The team member shall train and/or demonstrate in the job function for a minimum of ninety (90) days.
2. The maximum amount a team member can earn through training in this level is sixty cents (\$.60).

**LEVEL 3
Job Functions**

Lead Oper.	Relief Oper.	Entry Level Maintenance
Tri-tray	Cycle Counter	Prod. Warehouse Forklift
Clean-up	Flavor Person	Line Inspector
	Control Room	Krueter Enrober

Specific Criteria:

1. After the initial job function assignment if a team member receives and completes a demonstration opportunity in this level, the team member shall receive an hourly increase of thirty cents (\$.30). The team member shall train and/or demonstrate in the job function for a minimum of one hundred twenty days (120) before receiving the increase. Entry level maintenance requires an eighteen (18) month training schedule in this level.
2. The maximum amount a team member can earn through training in this level is sixty cents (\$.60).

LEVEL 3A

After serving six (6) continuous months in any of the following job functions, the team member will automatically go to this level. The team member shall continue to receive level 3A rate so long as he remains in this job function. *6/25/90 Team Commit when they are no longer performing 3A - (line goes down for season) they (T.M.) return to the pay receiving before 3A.*

Entry Level Maintenance

Control Room

Lead Operator

Clean-up

Flavor Person

**LEVEL 4
Job Functions**Production
TechnicianProcess
TechnicianFacility
TechnicianControl Room
Operator

Team members assigned to this level (except for Control Room Operators) shall receive specific training modules to satisfy over a 30 month period. Pay adjustments during this period will be as follows:

1st	6 month period	\$.50
2nd	6 month period	.50
3rd	12 month period	.75
4th	6 month period	.50

LEVEL 4A

Control Room Specialist

Members who have been trained in the control room function for a minimum of twelve (12) months.

LEVEL 5 Job Functions

Maintenance Craftsmen

Specific Criteria:

1. This level exists for members who are fully trained in one of the job functions listed in level 4 (excluding Start-Up Specialist).
2. Additional job functions and training opportunities may be added to this level when appropriate.

Maintenance Group Leader -- The Company may designate any employee in level 4 or 5 whom it considers in its sole judgement to be qualified to perform the leader function. Members assigned to this function shall receive a premium of \$1.00 per hour over their regular rate.

SUMMARY OF IMPORTANT POINTS PERTAINING
TO GROUP LIFE INSURANCE AND GROUP
HOSPITALIZATION INSURANCE

BAKERSFIELD I.C. PROCESSING FACILITY

I. GENERAL

1. A team member not presently actively at work who was not eligible for coverage at the time he ceased active employment will not be covered until such time as he returns to work and completes the normal waiting period.
2. Any claim that is pending at the time a covered team member ceases active work will be paid if the claim is presented with the time limits as presently required.
3. Coverage during a team member's absence of illness, injury or plant shutdown will be handled as follows:
Plant Shutdown
Beginning with the first month in which the team member works less than eighty (80) hours, and continuing for a maximum of three (3) months, the Company will continue to provide the Group Hospital, and Life Insurance for the team member and his dependents, if any. The team member may continue coverage under COBRA.
4. Coverage for a team member laid off because of lack of work will be handled as follows:
 - a) If the team member has worked for the Company for two (2) years or more, at the time of layoff, he shall receive insurance coverage through the month in which the layoff occurs and the month following.
 - b) Team members who have worked less than two (2) years, shall receive coverage until the end of the month in which they are laid off.
5. In both of the above cases the team member may elect to self purchase coverage under the COBRA provisions.

6. A team member working less than eighty (80) hours in any month for any reason other than illness, injury or layoff (one (1) month exception if two (2) years of service), shall be required to pay the entire monthly premium to maintain coverage.

The Company will resume the coverage the first of the month in which the team member returns to work, provided he works eighty (80) hours or more during that period.

- Revised*
7. Coverage for a team member granted a Leave of Absence: Eligibility for coverage must first be approved upon application by the Manager. After approval, coverage will be extended on the same terms as in Paragraph 6 above.

8. If an eligible team member is laid off and does not avail himself of the extended coverage, through COBRA and returns to work within three (3) months following layoff, his coverage will be reinstated as of the first of the month next following which he returns to work. If he is off more than three (3) months because of lack of work, he will have to observe the waiting period.

LETTER OF UNDERSTANDING

This agreement is between Carnation Company Ice Cream facility in Bakersfield and Teamster Local 87.

The Union and Company agree that those employees who are currently working the second shift as of this date are in fact a special project team to facilitate plant clean-up. When this project is completed, the following shall apply:

1. The Company may lay-off any amount in any order they deem appropriate.
2. Employees that continue to work until such time as additional production jobs are necessary shall be given primary consideration.
3. Employees who have been laid-off and were considered qualified by the Company shall be given preferential treatment in regard to filling future openings that occur within one hundred eighty (180) days of their lay-off.

For the Union:

For the Company:

This letter of understanding shall modify The Identified Sections of the agreement between Carnation Company and Teamsters Local 87. It shall become effective when signed by the parties and shall remain in effect for the term of the agreement.

PRODUCTION GROUPS - LAYOFFS AND RECALLS - Modified 11.3 and 11.4 *only*

The teams recognized in this seniority group are:

Ben Bens - *individual groups "Teams"*
 Rollos
 Extruline
 Drumstick
 Packaging
 Control Room

When a layoff is required in any of the above group the following procedure shall apply:

- (a) The Company shall identify the team affected by the layoff
- (b) Non-Probationary employees on the affected team, whose job is eliminated, shall first have the option to displace a member on a common team working on the same or different shift if they have greater seniority and are qualified to perform the job. *can't find LD / give option*
1-2 - lay-off instead of term.
- (c) Members affected who are in level 3A may be assigned by the Company to any job selected by the Company, provided they have greater seniority than the employee displaced. Members displaced by this shall be subject to layoff.
- (d) Team members that are not covered by (b) or (c) above shall be subject to direct layoff or job reassignment at the sole discretion of the Company. *20 days*
- (e) If the layoff exceeds thirty (30) calendar days the laidoff member shall then be given the opportunity to displace the least senior member within his seniority group if qualified to perform the job. *ie. PRODUCTION*
- (f) When the team is again resumed the affected members shall be returned to that team, to their position. *except - if they've bid on to another job.*

10/1/90 S.H. When you have displaced someone and you hold this job for a period of 6 mos. this becomes your job and your team.

WAREHOUSING GROUP:

The teams recognized in this group are:

A-1 Warehouse
C-1 Palletizing } 1 Group
Shipping

When a layoff is required in any of the above groups seniority shall prevail provided the member is qualified to perform the job.

i.e. Warehouse TM can bump Pallet T.M

MAINTENANCE GROUP

The teams recognized are:

E-1 Maintenance
M.R.O.

*should be defined
and we should be
consistent throughout
the plant.*

When a layoff is required in any of the above groups seniority shall prevail provided the member is qualified to perform the job.

In all of the above provisions it is understood and agreed that the Company shall be the sole and exclusive judge of qualifications and capability.

VACATION SHUTDOWNS: Modifies Section 19.6 delete and replace with;

The Company retains the right to schedule plant shutdowns as they deem necessary. Members may use their accrued vacation during these periods. The Company will inform members of the dates and duration when the information is available.

LINE INSPECTOR: Modifies Appendix "A"

This job function will also be placed in level 3A

JOB BIDDING (not in contract)

All members will have their bidding rights restored on February 1, 1990. Successful bidders thereafter will not be eligible for 24 months.


For the Company

For the Union

January 18, 1990

Date

Date

	SUBJECT INTRODUCTORY PERIOD OF EMPLOYMENT POLICIES & PROCEDURES	NO.	PAGE 1 OF 3
		EFFECTIVE 08-08-88	
		REVISES .1.1	DATED 01/90

Introductory Period of Employment

The first 120 calendar days of active employment are considered an introductory period. During this period you will be evaluated on your progress and suitability for continued employment. Factors that you will be evaluated on include quality of work, productivity, cooperation and attendance. Likewise during this period, you will have the opportunity to decide if the position suits you. Once you have completed the introductory period to the satisfaction of both yourself and the Company, you will be considered a regular full-time or a part-time employee.

Attendance

It is important to you and the Company that you be on the job regularly. We recognize that sometimes there are legitimate reasons for employees to be absent or late. However, poor attendance places a hardship upon your fellow employees by requiring them to perform the work normally assigned to you.

Planned work schedules can be seriously impaired by employees arriving late to work. You need to observe the scheduled hours of your team and report to work on time. Attendance is an important factor. If your individual record becomes a problem you will be counseled.

During the first 120 calendar days of active employment an employees absenteeism can not exceed the following:

<u>Calendar Days of Employment</u>	<u>Occurrences</u>
30	2
60	3
90	4
120	4

SUBJECT INTRODUCTORY PERIOD OF EMPLOYMENT (cont.) POLICIES & PROCEDURES	PAGE 2 OF 3
--	-----------------------

Attendance (cont'd)

The following definitions will be used for the purpose of this attendance guidelines:

Occurrence - 4 hours or more work time missed on a scheduled work day.

Tardy - Reporting to work after the scheduled starting time (this includes returning to your work area from lunch or breaks).

Early departure - Leaving work before the scheduled ending of your work shift.

Two tardies will be counted as one occurrence. Two early departures will be counted as one occurrence. One tardy and one early departure will be counted as one occurrence.

An employee who has a medical appointment, legal obligation, or bereavement in his/her immediate family must inform his/her Team Coordinator at least one (1) full work day prior to the absence. (An absence of this nature is considered an authorized absence).

An employee whose overall absenteeism exceeds the above listed "unauthorized absences" rate will be considered an unsatisfactory employee and may be subject to termination.

SUBJECT INTRODUCTORY PERIOD OF EMPLOYMENT (cont) POLICIES & PROCEDURES	PAGE 3 OF 3

ACKNOWLEDGMENT


I hereby acknowledge receipt of Carnation Dairies-Bakersfield's Policies and Procedures Handouts. I understand that the purpose of this handout is to provide employees with general information regarding the policies and procedures the Company attempts to follow in most cases but that NEITHER THESE HANDOUTS NOR ANY PROVISIONS OF THESE HANDOUT IS AN EMPLOYMENT CONTRACT OR ANY OTHER TYPE OF CONTRACT. I also understand that due to the nature of the Company's operations and variations necessary to accommodate individual situations, the policies and procedures set out in these handouts may not apply to every employee or me. Similarly, I understand and agree that the Company may change or modify these or other policies or procedures relating to employment matters from time to time as it considers necessary in its sole situations without notice to me. I understand and agree that these policies and procedures are to be interpreted and applied by the Company in its sole discretion, and whose decisions in this regard will be final. I understand that under no circumstances are the policies and procedures set out in this handout, or in other communications to employees, promises by the Company that my employment will always be governed by them.

I understand and agree that my employment at Carnation Dairies-Bakersfield is for an indefinite term and is terminable at any time at the will of either myself or the Company for any reason. I understand that severance of this employment relationship at any time, by either party, for any reason not prohibited by law, will not constitute a violation of any express or implied covenant. I also, understand that this status can only be altered by a written contract of employment which is specific as to all material terms and is signed by myself and the General Manager of Carnation Dairies-Bakersfield.

"I HAVE READ AND UNDERSTAND THE ABOVE STATEMENT AND AGREE TO READ THE POLICIES & PROCEDURES HANDOUT".

Employee Signature

Date

	SUBJECT	NO. 1	PAGE OF 2
	ATTENDANCE GOALS	EFFECTIVE 5-1-90	5.6
		REVISES 5.6	DATED 1-2-90

Good attendance is expected of all Team Members. Our goal is to maintain a plant-wide absenteeism rate below 2% and a tardy/early departure rate of 1%.

A Team Member who exceeds a plant-wide rate by 1/2% will have reached the attention points (currently overall absenteeism of 2 1/2% or more, currently a combined tardy/early departure rate of 1 1/2% or more).

..... Period Evaluation

- Attendance will be monitored on a sliding 12 month basis.
- November and December 1989 will be observation/data collection months.
- Formal implementation will be January 2, 1990. Formal counseling will begin February 1, 1990.

..... Attention Point

When a Team Member's overall absenteeism or combined tardy/early departure rate exceeds the plant average by 1/2% he/she should receive the appropriate level of corrective action. Currently, the attention point should be 2 1/2% for absenteeism and 1 1/2% for tardy/early departure.

Once a Team Member has an occurrence that brings them above the attention point, they should receive the appropriate level of corrective action. As long as progress towards the goal is made (during each consecutive month after corrective action), no additional corrective action will be taken; even though the Team Member's attendance and/or tardy/early departure rate exceeds the goals.

Violations

1st
2nd
3rd
4th
5th

Corrective Action

Counseling
Verbal reminder
Written Contract
Decision-making leave
Termination

SUBJECT ATTENDANCE GOALS	PAGE OF
	2 of 2

..... Excused Absences

Funeral Leave
Jury Duty
Court Subpoena

Reserve Duty
Leave of Absence
Industrial Accident

..... Violation Free Periods

- After receiving corrective action if a Team Member's absenteeism rate is reduced to at least 2 1/2% for three (3) consecutive calendar months his/her prior corrective action will be void. If the reduced rate is for less than three (3) consecutive calendar months then the prior corrective action step will be repeated.
- After receiving corrective action if a Team Member's tardy/early departure rate is reduced to at least 1 1/2% for three (3) consecutive calendar months his/her prior corrective action will be void. If the reduced rate is for less than three (3) consecutive calendar months then the prior corrective action step will be repeated.

..... Formula

Absenteeism rate = $\frac{\text{Days missed}}{\text{Days scheduled to work}}$

Tardy/early departure rate = $\frac{\text{Tardies and/or early departures}}{\text{Days scheduled to work}}$

..... Reporting Tardies and Absences


When a Team Member is unable to report to work or will report to work late, he/she must call their Team Coordinator/Department Manager no later than one hour before the beginning of his/her shift, and inform his/her Team Coordinator/Department Manager that he/she will be unable to report to work or that he/she will be reporting to work late.

..... Three Day Rule

A Team Member who fails to report to work or call in for three consecutive work days will be considered to have voluntarily terminated their employment.

Calculative Absenteeism & T/ED

NOV 1989	20 WORK DAYS	DEC 1989	14 WORK DAYS	JAN 1990	22 WORK DAYS	FEB 1990	19 WORK DAYS	MARCH 1990	22 WORK DAYS	APRIL 1990
<p>① 2/1/90 - CALCULATE ABSENTEEISM T/ED FOR 11/89, 12/89, 1/90</p> <p>② 3/1/90 - CALCULATE ABSENTEEISM T/ED FOR 11/89, 12/89, 1/90</p>										
WORK DAYS	CUM DAYS	ABSENCES	%	CORRECTIVE ACTION	T/ED	%	CORRECTIVE ACTION	T/ED	%	CORRECTIVE ACTION
NOV 89 20		1			1			1		
DEC 89 14	34	1			1			1		
JAN 90 22	56	0	24.5 = 3.6	COUNSELING	1	3/30 5.4		1	3/30 5.4	COUNSELING
FEB 90 19	75	0	2/15 = 2.7		1	4/15 5.3		1	4/15 5.3	

	SUBJECT	NO.	PAGE
		5.2	1 OF 4
		EFFECTIVE	
		1-02-90	
	REVISED	DATED	
	5.2	12-01-87	

1. THE FOUR STEPS OF CORRECTIVE ACTION:

When a Team Member has violated Company policy, established work rules or regulations, and/or has been involved in unacceptable conduct, the steps of the corrective action process outlined below should be followed. None of the steps should be bypassed except in cases of willful misconduct which warrants more severe action such as a decision-making leave or termination of employment.

STEP 1

Verbal Reminder

The Team Coordinator should call the Team Member into an office (or other private place), discuss the offense, remind the Team Member of the importance of the violated rule and express confidence that improvements will be made.

In this conference the Team Coordinator obtains a verbal assurance from the Team Member that he or she understands both the rule and the nature of the obligation and commitment, and obtains a verbal commitment from the Team Member.

STEP 2

Written Reminder

If the Team Member fails to correct the problem, discuss the offense in a supportive but serious manner. After the meeting, write a memo to the Team Member summarizing the conversation and confirming the agreement to improve in the future. The Team Member is required to sign the agreement. All documentation will be kept confidential.

In this conference the Team Member is again counseled by the Team Coordinator as in the first conference, however the Team Member is now required to re-affirm agreement and commitment by signing the statement.

SUBJECT	PAGE 2 OF 4
CORRECTIVE ACTION POLICY	

STEP 3
Decision-Making Leave

If the Team Member's behavior or improper conduct continues to be a problem after the written reminder, the designated Corporate Human Resources Manager should be consulted. If it is agreed that further action is warranted, then discuss the offense again and advise the Team Member to go home as soon as possible (after this discussion) to decide whether or not he or she should continue working for the Company. The Team Member will receive regular pay for hours not worked. Before the beginning of the following day, the Team Member must notify the Team Coordinator of his or her intentions. Document this in the file.

In this conference the Team Member is again counseled by the Team Coordinator. This time, however, the Team Coordinator asks the Team Member a very pointed question. "Do you want to continue your employment with this Company?" If the Team Member answers in the affirmative, the Team Coordinator has the Team Member sign a statement which contains the following four elements:

- * Recognition of the rule violated and agreement that the Team Member violated it
- * Statement of a desire to remain employed by the Company
- * Reaffirmation of assent and commitment
- * Recognition that another similar violation will constitute a lack of desire to remain employed with the Company and will result in termination.

If the Team Member answers in the negative or refuses to sign the required statement, the Team Member will be considered to have involuntarily resigned from employment.

STEP 4
Termination

If the Team Member's conduct continues to be unsatisfactory or the Team Member violates the same or similar rule, policy or practice again, the Team Members will be given a notice that, in accordance with the prior agreement, the Team Member has terminated employment due to improper conduct. Before the Team Member is given notice of termination, the case should be reviewed with higher levels of management and designated Corporate Human Resources Manager.

SUBJECT CORRECTIVE ACTION POLICY	PAGE 3 OF 4
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2. MORE SERIOUS VIOLATIONS:

In factually supportable cases involving more severe and willful misconduct, more severe corrective action, such as termination of employment or a decision-making leave should be invoked without following the procedure outlined above. The selection of the particular action to be applied will depend upon the facts, the severity of the offence and the Team Member's past record.

Examples of more severe willful misconduct include, but are not necessarily limited to:

- * Gross insubordination
- * Dishonesty
- * Violence
- * Conduct that violates the rights of other Team Members, such as any form of harassment or intimidation
- * Theft, misuse or damage of Company property
- * Embezzlement of Company funds
- * Falsification of Company records
- * Behavior that impairs work performance or the safety of the Team Member or others.

When an offense of such serious consequences occurs that immediate termination seems appropriate, the Team Member should be suspended without pay while management personnel further investigates the facts of the offense and the appropriate action is decided upon.

If the facts do not warrant termination, the Team Member will be returned to work with or without back pay, depending on the circumstances, and Step 2 of the corrective action process should be implemented.

Should the facts warrant immediate termination, all documentation should be reviewed with the designated Corporate Human Resources Manager prior to the Team Member being advised of the termination.

SUBJECT CORRECTIVE ACTION POLICY	PAGE 4 OF 4
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3. DOCUMENTATION

Documenting each step of the four steps of the corrective action process is the Team Coordinator's responsibility. Keep files accurate and up-to-date. Any Team Member whose performance does not improve or who continues to engage in misconduct for which a warning was issued should never be surprised when termination results.

4. TEAM PARTICIPATION

Teams as a group may request that the Team Coordinator take steps of corrective action in regard to a particular member. They may also directly participate up to the point of issuing a social contract (which should be the same as a written reminder). After a social contract has been issued by a team it shall then be the responsibility of the Team Coordinator to follow through and make or recommend any further action.

Form NLRB-102
(11-64)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDFORM EXEMPT UNDER
44 U.S.C. 3512

PETITION

DO NOT WRITE IN THIS SPACE

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering them accordingly.

CASE NO.

31-RC-6878

DATE FILED

10-23-91

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☒ RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER
The Carnation Company

EMPLOYER REPRESENTATIVE TO CONTACT

Chris Gardner

(805)

PHONE NO.

327-8594

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)

7201 District Blvd., Bakersfield, CA

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Factory/Production Facility

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Ice Cream

5. Unit Involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included

All full-time and regular part-time production and maintenance employees employed by the employer at its Bakersfield facility.

Excluded

Guards, Supervisors as defined in the Act, and all other employees

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT 300

PROPOSED (BY UC/AC)

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item "a" or "b," whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on _____ and Employer

(Month, day, year)

declined recognition on or about _____ (If no reply received, so state)

(Month, day, year)

7b. ☒ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME General Teamsters & Food Processing Local Union 87

AFFILIATION

IBT, AFL-CIO

ADDRESS 3724 Pierce Road, Bakersfield, CA 93308

DATE OF RECOGNITION OR CERTIFICATION

August 11, 1988

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

December 31, 1991

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES _____ NO ☒

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ A LABOR

(Insert name)

ORGANIZATION, OF _____ SINCE _____

(Insert address)

(Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (If none, so state)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

GENERAL TEAMSTERS LOCAL NO. 87, IBT, AFL-CIO

(Petitioner and affiliation, if any)

By WARD C. ALLEN Signature of representative or person filing petition

Address 3724 Pierce Rd., Bakersfield, CA 93308

cc: Ken Young, Esq. (Insert address and number, city, State, and ZIP Code)

Business Representative

(Title, if any)

(805) 327-8594

(Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

NLRB-502
(11-64)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDFORM EXEMPT UNDER
44 U.S.C. 3012

FIRST AMENDED

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO
31-RC-6878DATE FILED
11-18-91INSTRUCTIONS—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(1) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☒ RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER
The Carnation Company (NESTLE)
EMPLOYER REPRESENTATIVE TO CONTACT
Chris Gardner (805) 398-35003. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, state, and ZIP Code)
7201 District Blvd., Bakersfield, CA 93308

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Factory/Production Facility

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Ice Cream

5. Unit involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included All regular full-time and regular part-time production and maintenance employees employed by the employer at its Bakersfield, California facility

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT 300

PROPOSED (BY UC/AC)

Excluded Guards, Supervisors as defined in the Act, and all other employees

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item "a" or "b," whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on _____ (Month, day, year) and Employer declined recognition on or about _____ (Month, day, year) (If no reply received, so state)7b. ☒ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME General Teamsters & Food Processing Local
Union No. 87AFFILIATION
IBT, AFL-CIO

ADDRESS

3724 Pierce Road, Bakersfield, CA 93308

DATE OF RECOGNITION OR CERTIFICATION
August 11, 1988

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

December 31, 1991

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES NO XX

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ A LABOR (Insert name)

ORGANIZATION, OF _____ SINCE _____ (Insert address) (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c, WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

TEAMSTERS LOCAL NO. 87, and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501; as Joint Petitioners

By Ward C. Alden (Petitioner and affiliation, if any) Business Representative

Address 3724 Pierce Rd., Bakersfield, CA 93308 (805) 327-8594

cc: Ken Young/Dan Rosen (Petitioner and ZIP Code) (Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 305-488

13B A-401

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

NESTLE DREYER'S ICE CREAM

Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 501, AFL-CIO

Petitioner,

Case No. 31-RC-066625

DECISION AND DIRECTION OF ELECTION

On October 12, 2011, the International Union of Operating Engineers Local 501, AFL-CIO (Union or Petitioner), filed a petition in Case 31-RC-066625 under §9(c) of the National Labor Relations Act, as amended, seeking to represent a unit composed of employees employed in various classifications at Nestle Dreyer's Ice Cream Bakersfield Operations Center located at 7301 District Boulevard, Bakersfield, California 93313-2042.¹

On October 27 and 28, 2011, a hearing was held on the referenced petition. The only issue presented was whether the petitioned-for unit is an appropriate unit in that it seeks to include only full-time and regular part-time maintenance employees, and to exclude production employees.

The Petitioner contends that a bargaining unit consisting of just the maintenance employees is an appropriate unit. The Employer's position is that the petitioned-for unit of just maintenance employees is not an appropriate unit; rather, an appropriate unit must consist of

¹ The Petition described the unit inclusions as all full-time and regular part-time maintenance employees employed by the Employer at its facility located at 7301 District Boulevard, Bakersfield, CA and the exclusions as all other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employers, QA Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

all full-time and regular part-time maintenance and production employees as well. The Petitioner has stipulated that should the Regional Director find that a bargaining unit consisting of production employees and maintenance employees is appropriate, the Petitioner is prepared to proceed to an election in that unit.

For the reasons set forth below, I conclude that the petitioned-for unit is an appropriate unit.

The Board has delegated its authority in this proceeding to me under §3(b) of the Act. Upon the entire record in this proceeding, I find:

I. HEARING OFFICER RULINGS: The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

II. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.²

III. LABOR ORGANIZATION: The parties³ stipulated and I find that the Petitioner is a labor organization within the meaning of §2(5) of the Act and claims to represent certain employees of the Employer.

IV. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of §9(c)(1) and §2(6) and (7) of the Act.⁴

V. APPROPRIATE UNIT: The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of §9(b) of the Act:

² The Employer, Nestle Dreyer's Ice Cream, is a Delaware corporation with a facility located in Bakersfield, California, where it is engaged in the business of producing ice cream and frozen dairy products. Within the past twelve months, a representative period, the Employer sold goods and services valued in excess of \$50,000.00 directly to customers located outside the State of California.

³ The Petitioner and Employer are collectively referred to as the "parties."

⁴ The parties stipulated and I find there is no contract or any other bar that would preclude the processing of this petition.

INCLUDED:

All full-time and regular part-time maintenance employees employed by the Employer at its facility located at 7301 District Boulevard, Bakersfield, CA.

EXCLUDED:

All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employers, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

FACTS

The Employer manufactures and distributes ice cream products. All aspects of the production and distribution process are located within the same facility in Bakersfield, California, called the Bakersfield Operations Center ("BOC"), which is located at 7301 District Boulevard, Bakersfield, California. The BOC is a 47-acre-sized property that contains a factory measuring about 595,000 square feet. The factory includes office space, a frozen warehouse, a dry warehouse, a production area, and utilities for support and maintenance. There are approximately 113 maintenance employees and 578 production employees at the BOC, which runs twenty-four hours a day, seven days per week; the hourly production and maintenance employees work on all three shifts.

Most production employees work primarily on the BOC's production lines, along with about 56 maintenance employees who provide skilled mechanical support to the lines. The lines are divided into three business units: East Business Unit; West Business Unit; and Dibs and Packaged (DAP) Unit. There are 26 production lines in total: 11 in East Business Unit, 8 in West Business Unit, and 7 in DAP Unit. The production lines also include palletizing areas, where the product coming off the production lines is transported to the Employer's on-site Distribution Center, which is staffed by production employees. About 16 palletizing mechanics, who are maintenance employees, provide support to the palletizing areas. There are also production employees who work in pre-manufacturing, who are in charge of ordering materials and ingredients for the ice cream and mixing it for the lines. Generally, production employees are assigned to a specific production line and are responsible for working on that line; most

maintenance employees are assigned to a specific Business Unit or palletizing area and cross-over the production lines within the Business Unit, providing maintenance support wherever needed on their assigned production lines or palletizing area. Additionally, maintenance employees work outside the Business Units, providing other kinds of maintenance support. The largest of these is the Utilities Group, consisting of about 15 – 16 maintenance employees, who are in charge of maintaining the BOC's ammonia refrigeration systems and all other systems, such as the boilers. Other maintenance employees are shop mechanics. One group works out of the machine shop, which fabricates parts for the production lines. In addition to the machine shop, there are smaller shops at each business unit that maintenance mechanics use for quick repairs of damaged or malfunctioning parts; only maintenance employees work in the shops.

The Employer also operates a Research and Development (R&D) Center at the BOC. Production employees do not work at the R&D Center; maintenance employees, however, do work at the R&D Center whenever a repair is needed. Moreover, maintenance employees, such as the Utilities Group, travel throughout the entire BOC to perform their electrical, heating, and ventilation maintenance duties. Production employees are assigned only to a specific area of the plant, such as a production line, or a palletizing area.

The BOC is divided into departments called Leadership Teams. Each Leadership Team has a Head who reports directly to the Plant Manager, who in turn is in charge of the BOC's overall operations. Maintenance and production employees have separate supervision; there is no common immediate supervision between the maintenance and production employees. All production employees are on either the Manufacturing Team or the Pre-Manufacturing Team. All maintenance employees are on the Technical Operations Team. If a maintenance employee needs to leave for an emergency, the maintenance employee must ask permission from the Maintenance Supervisor, not from the Production Supervisor.⁵

There are three basic types of production employees who work on the production lines: Ice Cream Makers I, Ice Cream Maker II, and Mix Maker. There are also warehouse specialists and palletizing specialists working to support the Distribution Center and the palletizing area,

⁵ From time-to-time, a Maintenance Supervisor is not on the floor. In such situations, the maintenance employee would report to the Production Supervisor for routine issues. However, in the event of a critical issue, the maintenance employee calls the Maintenance Supervisor via a Nextel phone with which they are provided.

respectively. As to maintenance employees, there are Entry Maintenance Mechanics, Maintenance Technicians, Maintenance Craftworkers, Maintenance Group Leaders and Maintenance Control Technicians.

Maintenance employees generally receive their work assignments from their first-line maintenance supervisors. When there is a shift change, the new maintenance mechanic will find out what still needs to be done from the mechanic who is leaving. Mechanics perform preventative maintenance on all machines, and these instructions come from a computer system. Finally, if there is a breakdown on the production line, a maintenance or production supervisor may summon a mechanic to ask for help to figure out what is wrong; however, whenever a production supervisor asks a maintenance mechanic to perform a task, the maintenance mechanic must first obtain permission from a maintenance supervisor, in part so the maintenance supervisor can prioritize the work of the maintenance mechanic.

In greater detail, the ice cream production process is as follows. Production employees working in pre-production bring ingredients to the Mix Makers, who create the ice cream mix in tanks according to computer-generated recipes. Process Technicians, who are maintenance employees and of which there are about twelve, primarily provide support to the Mix Makers by, for example, providing technical assistance if the computer malfunctions. Once the mix is made, the Process Technicians control the processes to get the mix to a mix tank, and once the mix is in the mix tank, the Ice Cream Makers on the line draw the mix from the mix tank to flavor vats on the line. Any problems or issues within this process are the Process Technicians' responsibility to fix. The ice cream mix is then pumped to the various production lines, where the Ice Cream Maker I and II employees continue the process. The Ice Cream Maker I typically does the packing of the product, while the Ice Cream Maker II functions more as a line operator, operating equipment such as the freezer, the filler, the cartoner, and the wrapper.

When the production lines start up for the day, the production supervisors walk the lines looking for any issues that may have arisen. If they see any, they page or call a maintenance technician to address it. After the line starts up, if trouble is detected, the production supervisors will direct maintenance mechanics to the issue to address it. Similarly, if a production employee encounters a problem and cannot fix it himself, the production supervisor will page a maintenance mechanic to fix the problem. Production employees on the lines also directly page

maintenance mechanics over the PA system if the equipment is not working. Still, as noted above, the maintenance mechanic must obtain prior permission from his maintenance supervisor before making the required repair. Generally, if a problem is minor or routine, the production employees handle the problem on their own, but more complicated problems necessitating technical skill require a maintenance employee. Although a production employee may identify a problem he is experiencing, it is the province of the maintenance employee to assess the issue and fix it.

Production and maintenance employees on the lines typically interact throughout the day. For example, when a new crew comes onto a line for a shift hand-off, the maintenance employees stand by for support. Every third shift, production employees take apart all of the machines completely to clean, sanitize, then reassemble them. During this process, a maintenance employee is present to fix any problem that is found. If production employees identify a broken part during the process, they show it to maintenance, which then either tries to find a new part in the stock room or take the part to the shop to repair it. Prior to starting up the line again after reassembly, production runs a dry run, called a "pre-flight," while maintenance employees stand by for support. Some pieces of equipment need fine tuning, which is beyond the skill level of the Ice Cream Makers. In the event of a jam, the Ice Cream Maker will first try to clear the jam himself. If he cannot, a maintenance employee fixes it, because production employees lack the knowledge or skill to fix major jams, and sometimes a part will need to be replaced. In most cases, the Employer does not want production employees fixing complicated jams, because they lack the requisite expertise.

Production and maintenance employees also interact during Preventative Maintenance (PM) Days. Every week, each line has a day where the line starts two-to-four hours late. During this period the Ice Cream Maker II employees follow the maintenance mechanic around asking questions and watching what the maintenance mechanics are doing so they can better understand their equipment; however, the maintenance mechanics do the actual work.

In addition, the Ice Cream Maker IIs are jointly responsible with the maintenance mechanics to ensure safe production of the highest quality, to troubleshoot and to take appropriate corrective action. For example, both maintenance and production employees must report safety issues to maintenance and production supervisors. Thus, if a mechanic saw a guard missing on

a line, he would tell the Ice Cream Maker II to shut down the line to fix it. Ice Cream Maker IIs and mechanics work together on “root cause investigations” to find the source of a breakdown. If the filler on the Rollo line were malfunctioning, causing colors to bleed in the product, the Ice Cream Maker II and the production technicians would work together to figure out the root cause of the issue. Similarly, Ice Cream Maker IIs and mechanics work together to troubleshoot ice cream freezer operations, ingredient feeders, fruit feeders, sauce pumps, and shakes. If an Ice Cream Maker II cannot figure out the problem, he calls maintenance to work with him to determine the source of the problem.

Maintenance employees regularly work with the mix makers. For example, during sanitation, the mix maker engages in rebuilding the pumps. Prior to restarting the pump, the mix maker consults with the maintenance technician to make sure the pump has been rebuilt properly, essentially asking the maintenance technician to “double check” it for him, using his greater expertise to fine-tune the pump. Similarly, mix makers and maintenance mechanics work together to troubleshoot “mix batching,” and mix makers regularly work together with process technicians to ensure that all of the equipment and mix-making charts meet state requirements.

Production and maintenance employees further interact during daily Operational Review meetings. Typically, a maintenance group leader and a production supervisor will be present at these meetings, along with a maintenance mechanic and sometimes a maintenance supervisor, and a production employee, such as an ice cream maker. Generally, these individuals discuss results from the prior day and any kinds of breakdowns that occurred that need to be addressed to find the cause of the problem.

Maintenance employees rarely perform duties typically performed by production employees. If there were trouble with a cartoner, production employees would take the product and put it in “repack” bins in the freezer so it does not go to waste. After a maintenance employee fixes the problem, the maintenance employee may help the production employee put the “repack” back on the line. Similarly, maintenance employees may help production employees take out the trash for a few seconds during the day. However, maintenance mechanics spend about 90% of their time performing skilled maintenance work. Occasionally, a production employee will make a minor adjustment or repair, but the overwhelming majority of repairs are

performed by maintenance employees, as production employees lack the appropriate skill. As described by the Employer's maintenance manager, the primary responsibility of maintenance employees is to keep the equipment running; the primary responsibility of the production employees is to produce the product.

There is no evidence that a maintenance employee has temporarily acted as a production employee due to staffing shortages. However, of the approximately 113 current maintenance employees, between 30 to 50% were hired from the ranks of the production employees.⁶ By contrast, the Employer's Human Resources Director could think of only one maintenance employee who became a production employee. The Employer provides an education benefit to all employees. Production employees may use this education benefit to take classes to put them in a better position for successfully obtaining a maintenance position should an opening arise.

Maintenance employees are higher skilled and subsequently higher paid. Production employees earn a range from about \$15.00 per hour to \$22.00 per hour, whereas maintenance employees earn a range from about \$20.00 per hour to \$30.00 per hour. In contrast to the production employees, maintenance employees have significant technical knowledge in the areas of mechanics, electronics, and computers, including programmable computer logic. Production employees are not allowed to use machinery in the Machine Shop because they lack the skills to do so. Certain maintenance employees who work on refrigeration systems require RITA certification;⁷ production employees do not require RITA certification. Conversely, some production employees, such as the Mix Makers, are required to have a pasteurization license,⁸ whereas no maintenance employee is required to have such a license. Maintenance mechanics, unlike any production employees, are required to have two years experience in troubleshooting pneumatics, hydraulics, and electrical and manufacturing, one year experience in computerized maintenance management, and five to seven years experience in industrial high speed maintenance. Furthermore, mechanics must pass a written test assessing their skill levels in these areas.

⁶ The Employer's Plant Manager placed the figure between 30 to 40%; the Employer's Human Resources Director in the high 40%, which she rounded up to 50%.

⁷ The Employer's Human Resources Director, who provided testimony on this subject, was unable to recall what RITA stood for. RITA certification requires a series of classes and a test.

⁸ The pasteurization license is required by California state law for anyone who pasteurizes raw materials.

Production Line 16 in the East Business Unit is known as the Pilot Line, which is part of a program that the Employer has called Total Productive Manufacturing (TPM). The goal of TPM is to implement Autonomous Maintenance (AM) production lines in the factory. AM means that the Ice Cream Makers will be trained to perform simple preventative maintenance historically performed by maintenance mechanics, such as to clean, inspect and lubricate the machinery on the production lines so the mechanics will not have to perform these functions. Currently, the Ice Cream Makers lack the skill to perform this kind of routine maintenance work. The Pilot Line was first launched about two years ago, but it was discontinued about six months ago because of high production employee turnover on Line 16 and because the program “hadn’t gained sustainable results.”⁹ Very recently, in the week of October 23, the Pilot Program on Line 16 was restarted. Pursuant to the AM program, production employees are being trained to do cleaning, inspection, and lubrication activities historically performed by maintenance employees. Other than the Pilot Program on Line 16, no production employees are currently performing any duties historically performed by maintenance employees.

Every year, the BOC has an annual shutdown of two weeks to a month. During the shutdown, all maintenance employees are required to work to rebuild the production lines, but only a few of the production employees – those who volunteer for work and have been chosen by the Employer – assist with activities such as re-bricking and cleaning.

The Maintenance Department has an individual called the training group leader who is in charge of training both production and maintenance employees; he provides training on video jets, metal detector wear, ice-cream freezing, and computer-based training. Of the production employees, the Ice Cream Maker II employees receive this training because they are lead operators of the line and they are required to know how their equipment works. For example, if the ice cream freezer is not working properly, the Ice Cream Maker II must understand how to adjust the viscosity and take over-run samples of the ice cream. The Ice Cream Maker II must also understand how to clean and calibrate the video jet heads that print the “sell by” date on the product.

Production Lines often break down due to freezer fluctuation, wrapper problems, and jamming cartoners. In the event of a breakdown, an Ice Cream Maker I will initially look at the

⁹ The Pilot Program also applied to Rollo Line 1 and Line 30.

problem; if it is minor and routine, the Ice Cream Maker I fixes it. For any issue that requires more than minor and routine maintenance, the Ice Cream Maker I will call a maintenance mechanic to work on it. Typically, the Ice Cream Maker II will stay during the entire repair in order to learn about the machinery in case the same problem happens again, so that he can fix it without calling over the maintenance mechanic.¹⁰ The rest of the Ice Cream Makers on the line clean up and help prepare for a restart. After the line is restarted, the Ice Cream Maker II, with the input of the mechanic who fixed the problem, enters the breakdown information into a computer database that tracks such things. The Maintenance Department then analyzes this information to assess performance of the line.

Production and maintenance employees share common parking lots, time clocks, break and lunch rooms, and lockers. They also wear virtually identical company-supplied uniforms and safety equipment. The only difference is that maintenance employees wear a dark blue shirt and production employees wear a light blue shirt, which is made of different materials. It is possible to distinguish maintenance employees from production employees on the basis of their shirts.

Many maintenance employees are provided with Nextel phones so they may communicate with each other within the Maintenance Department; production employees do not receive these phones. With the exception of Group Leaders, maintenance employees work ten-hour shifts and receive a paid meal period. Typically, production employees work eight-hour shifts and receive no paid meal break. Maintenance as well as production employees are subject to being on-call if they are off their shift and an emergency occurs. The Employer maintains separate seniority lists for maintenance and production employees, which are used for such purposes as shift selection and vacation.

Maintenance employees receive a tool allowance because they are responsible for providing their own tools; production employees, not being responsible for providing their own tools, receive no such allowance. Production employees are provided with tools to make minor adjustments to machinery, such as loosening bolts to adjust railing on the conveyor.

¹⁰ There is a lack of specific evidence that any Ice Cream Maker II actually has in fact performed such maintenance after observing a maintenance mechanic fix the problem.

Maintenance employees attend Maintenance Department meetings; most of the time, only maintenance employees, and not production employees, attend these meetings. About 25 to 40% of production employees are classified as temporary employees, meaning that these employees are hired by a third-party agency to allow the Employer flexibility in staffing needs;¹¹ the overwhelming majority of maintenance employees are classified as permanent.

The Employer publishes and distributes a common employee handbook, the terms of which apply to both production and maintenance employees. By and large, the terms and conditions of employment set forth in this employee handbook are identical for both production and maintenance employees, with minor exceptions relating to their work schedules. For example, with respect to overtime, production employees, who work a “5-8” schedule,¹² accrue overtime on reaching 8 hours a day or 40 hours per week, whichever comes first; maintenance employees, the majority of whom work a “4-10” schedule,¹³ are paid overtime on reaching 10 hours a day or 40 hours in a week, whichever comes first. Similarly, employees working a “5-8” schedule receive 5 days of sick pay at 8 hours per day, whereas employees working a “4-10” schedule also receive 5 days of sick pay, but at 10 hours per day.¹⁴ The same system applies to holiday pay. In most other respects, such as equal employment opportunity, anti-harassment, drug use, attendance, and discipline, the terms and conditions of employment are identical for production and maintenance employees. Likewise, production and maintenance employees enjoy the same benefits and eligibility requirements for benefits, such as life insurance, long term disability, health insurance, retirement, 401-k, flexible spending account, education reimbursement, baby formula coupons, perfect attendance awards, biweekly paychecks, funeral pay, jury pay, and holiday premium pay. Pursuant to the handbook, production and maintenance employees are evaluated annually by their immediate supervisor. The Employer maintains a formal job-bidding system for production employees, but not for maintenance em-

¹¹ Although some maintenance employees are hired by a third party agency, the record does not reflect the extent to which this is the case. The temporary production employees are not included in the production employees whom the Employer seeks to include in the unit.

¹² “5-8” refers to five days a week, eight hours per day.

¹³ “4-10” refers to four days a week, 10 hours per day.

¹⁴ Both production and maintenance employees work mandatory overtime, but maintenance employees tend to work more overtime than production.

ployees. With regard to shift assignments, the Employer considers seniority to determine which employee obtains a more desirable shift for both production and maintenance employees.

From August 26, 1988 to December 31, 1991, there was a collective bargaining agreement (CBA) between the General Teamsters and Food Processing Union, Local No. 87, and Carnation Company,¹⁵ at the Bakersfield Ice Cream Processing Facility.¹⁶ Article 1 – Recognition – of this CBA defined the bargaining unit as:

...all hourly *production, maintenance* and materials team members at the plant but specifically excluding all office and plant clerical, security, team coordinators and other Supervisory Personnel as defined in the Act, resource specialists and information automation services. [Emphasis added.]

The International Union of Operating Engineers, Local 501, AFL-CIO¹⁷ filed an unfair labor practice charge in case 31-CA-17367 against Carnation Ice Cream (Bakersfield, CA Ice Cream Plant) on September 26, 1988, alleging that the employer violated §8(a)(2) and (3) by recognizing a minority union and requiring, as a condition of employment, that its employees join the union. In settlement of this charge, the Teamsters agreed to cease representing the employees.¹⁸ On October 23, 1991, in case 31-RC-6878, the General Teamsters Local No. 87, IBT, AFL-CIO filed a representation petition seeking to represent the following unit of employees at the Carnation Company's Bakersfield, California facility:

Included: All full-time and regular part-time *production and maintenance employees* employed by the employer at its Bakersfield facility.

Excluded: Guards, Supervisors as defined in the Act, and all other employees. [Emphasis added.]

¹⁵ It is not clear whether this contract actually was in effect during its full term. As explained below, shortly after the Teamsters were recognized in 1988, the Operating Engineers filed an unfair labor practice charge alleging that Carnation unlawfully recognized a minority union. In settlement of this charge, the Teamsters agreed to stop representing the employees. The record does not establish the date of this settlement.

¹⁶ The parties stipulated that Carnation Company is a predecessor to the Employer and that the Employer is a successor-in-interest to the Carnation Company. This contract came about by means of recognition by the Carnation.

¹⁷ This union is the same as Petitioner.

¹⁸ The record provides no details of this settlement's terms.

The record also contains a first amended petition in the same case, filed on November 18, 1991, seeking to represent the same unit at the same facility with the same employer; however, the first amended petition adds the International Union of Operating Engineers Local 501 as a joint Petitioner. Both petitions indicate that a collective bargaining agreement was then in effect, expiring December 31, 1991.¹⁹ The record further reflects that both General Teamsters Local No. 87 and International Union of Operating Engineers Local 501 were certified as joint representatives of the above-described unit after an election, pursuant to a stipulated election agreement, which was conducted on March 13, 1991. Finally, the record established that in *Nestle Ice Cream Company v. National Labor Relations Board*, 46 F.3d 578 (6th Cir. 1995), the Court held that the General Teamsters Local No. 87 and International Union of Operating Engineers Local 501 were improperly certified in an election that deprived employees of a free and fair choice, and therefore the Court refused to enforce the Board's bargaining order. According to the testimony of the Employer's Human Resources Director, after this decision by the Sixth Circuit, the Employer no longer gave effect to the 1988 CBA.²⁰

ANAYLSIS

1. The legal standard

It is well established that a petitioned-for unit need only be *an* appropriate unit for collective-bargaining. It need not be *the most* appropriate unit, or what could become the ultimate unit. *Specialty Healthcare*, 357 NLRB No. 83 (August 26, 2011); *International Bedding Co.*, 356 NLRB No. 168 (May 31, 2011), citing *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Overnite Transportation*, 322 NLRB 723 (1996) (“[t]he plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one unit”). “[I]t is irrelevant that some other larger or smaller unit might also be appropriate or most appropriate.” *International Bedding Co.*, *supra*, quoting *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037, 1038 (1967), *enfd.* 409 F.2d 201 (5th Cir. 1969).

¹⁹ Although the record is not explicit on this point, presumably this is the same as the above-mentioned CBA.

²⁰ There is additional testimony from the Employer's Human Resources Director that in 1999, the United Food and Commercial Workers lost an election to represent a unit of the Employer's employees consisting of both hourly maintenance and production employees.

When an issue of bargaining unit appropriateness is raised, the Board begins with the petitioned-for unit, and if deemed appropriate, the inquiry ends, rendering irrelevant a party's argument that the unit would be more appropriate if it excluded or included an additional group of employees. See *The Lundy Pacing Co.*, 314 NLRB 1042, 1044 (1994) (factors that supported adding a group of employees to a petitioned-for unit did not mean that they must be included in order to constitute an appropriate unit); *Indiana Refrigerator Lines*, 157 NLRB 539 (1966) ("the fact that the drivers and maintenance employees might also separately constitute appropriate units does not preclude a finding that both groups together also constitute an appropriate unit"); *Heublein, Inc.*, 119 NLRB 1337, 1339 (1958) (Board finds appropriate both combined and separate units of production and maintenance employees).

Only if the petitioned-for unit is deemed inappropriate for collective-bargaining purposes will the Board consider alternate unit proposals. *Overnite Transportation, supra* ("[t]he Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining").

In *Specialty Healthcare*, the Board set forth test for determining whether the petitioned-for unit of employees is an appropriate unit when a party contends that a larger unit is the only appropriate unit:

We therefore take this opportunity to make clear that, when employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills or similar factors), and the Board finds that the employees in the group share a community of interest after considering traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit. *Specialty Healthcare, supra* at 13.²¹

2. Maintenance employees are readily identifiable as a separate group

²¹The Employer argues against the validity of the Board's recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (August 26, 2011). While cognizant of the Employer's arguments in this respect, I am bound to follow Board law.

The maintenance employees are readily identifiable as a separate group because they are in their own department, and are in different job classifications, have different skills, and perform different functions from production employees.

The Employer's maintenance employees are in a separate departmental section. The BOC is divided into departments called Leadership Teams. Each Leadership Team has a Head who reports directly to the Plant Manager, who in turn is in charge of the BOC's overall operations. All maintenance employees are on the Technical Operations Team. All production employees are on either the Manufacturing Team or the Pre-Manufacturing Team.

The maintenance employees are in different job classifications than the production employees. The maintenance employees are classified as Entry Maintenance Mechanics, Maintenance Technicians, Maintenance Craftworkers, Maintenance Group Leaders and Maintenance Control Technicians. By contrast, the production employees are classified as Ice Cream Makers I, Ice Cream Maker II, Mix Maker, Warehouse Specialist and Palletizing Specialist.

Moreover, the maintenance employees have very different skills than the production employees. Maintenance employees have much more technical knowledge in areas of mechanics, electronics, and computers, including programmable computer logic. Maintenance mechanics, unlike any production employees, are required to have one year experience in computerized maintenance management, two years experience in troubleshooting pneumatics, hydraulics, and electrical and manufacturing, and five to seven years experience in industrial high speed maintenance. Maintenance mechanics work in the Machine Shop to repair and fabricate new parts. By contrast, production employees are not allowed to use machinery in the Machine Shop, because they lack the skills to do so. Certain maintenance employees who work on refrigeration systems require RITA certification; no production employees are required to hold RITA certification. Conversely, some production employees, such as the Mix Makers, are required to have a pasteurization license, whereas no maintenance employee is required to have such a license.

Maintenance and production employees perform different functions. As described by the Employer's Maintenance Supervisor, the maintenance employees are primarily in charge of maintaining the Employer's machinery, and the production employees are primarily in charge of producing the ice cream. Maintenance mechanics spend about 90% of their time performing skilled maintenance work. Occasionally, a production employee will make a minor adjustment

or repair, but the overwhelming majority of repairs are performed by maintenance employees, as production employees lack the appropriate skill. Although the production employees on the production lines perform some routine maintenance work, such work is merely incidental to their primary function. The Employer's Maintenance Supervisor explained that it would be inefficient and a waste of resources for its maintenance employees to perform the lesser skilled work of the production employees. For example, in the pre-production process, whereas the Mix Makers (who are production employees) produce the ice cream mix according to a computer generated formula, the Process Technicians (who are maintenance employees) control the computerized process that brings the mix to mix tanks, and are in charge of all maintenance on these computers. This maintenance work requires knowledge of computer logic that the production employees lack. Further, during the "pre-flight" process, the maintenance employees perform fine-tuning calibration to machines when such calibration exceeds the lower skill level of the Ice Cream Makers. Also with respect to jammed equipment, the Employer does not want production employees fixing complicated jams, as they lack the required expertise.

3. Maintenance employees share a community of interest

The maintenance employees share a sufficient community of interest amongst themselves for purposes of collective bargaining. To determine whether the group of employees in a petitioned-for unit constitutes an appropriate unit, the Board must determine whether the employees share a sufficient "community of interest" for purposes of collective bargaining. It is a totality of circumstances test based on the analysis of a number of factors, none of which are singularly dispositive, including: (1) common skills, training, duties, and functions; (2) common management and supervision; (3) common work locations; (4) the degree of interchange, integration, and contact amongst the employees; (5) the wages, benefits, working hours, and general working conditions of the employees; and (6) any historical bargaining involving the employees. *Overnite Transportation, supra* at 724; *Canal Carting*, 339 NLRB 969 (2003). A petitioner's desire in regard to unit composition and scope is also entitled to significant weight, so long as it is not based on an arbitrary grouping of employees. *International Bedding Co.*, 356 NLRB No. 168 (2011); *Airco, Inc.*, 273 NLRB 490, 494 (1984); *Moore Business Forms, Inc.*, 204 NLRB 552 (1973).

The maintenance employees share similar wages. Maintenance employees earn a range from about \$20.00 per hour to \$30.00 per hour, whereas production employees earn a range from about \$15.00 per hour to \$22.00 per hour. In the Employer's wage chart, of the five classifications of maintenance-type employees, only one classification, the Entry Maintenance Mechanic, has any overlap with production employees' wage rates. An insignificant overlap of wages does not preclude a finding that a maintenance-only unit is an appropriate unit. See e.g., *Ore-Ida Foods*, 313 NLRB 1016, 1017 (1994) (maintenance-only unit appropriate where there existed an overlap of two maintenance positions with production positions with regard to pay).

Maintenance employees share similar hours. Most maintenance employees work a "4-10" schedule, which means they work four days a week, 10 hours per days. Production employees work a "5-8" schedule, meaning they work five days a week, eight hours per day. Overtime is calculated differently for maintenance employees than production employees. Maintenance employees working a "4-10" schedule are paid overtime on reaching 10 hours a day or 40 hours a week, whichever comes first. Production employees accrue overtime on reaching 8 hours a day or 40 hours per week, whichever comes first. Although both production and maintenance employees work mandatory overtime, maintenance employees tend to work more overtime than production. Similarly, maintenance employees working a "4-10" schedule receive 5 days of sick pay at 10 hours per day, whereas production employees receive 5 days of sick pay at 8 hours per day.

The maintenance employees share common supervision amongst themselves, reporting directly to their own maintenance supervisors. Although production supervisors can call or page a maintenance mechanic, the maintenance mechanic must first confer with his maintenance supervisor in order that the maintenance supervisor may prioritize his work. Rather than establish common supervision, these instances "are better characterized merely as identification by production personnel of what repairs are needed to be done by maintenance personnel." *Ore-Ida Foods, Inc.*, supra at 1019. There is no evidence that production supervisors have the authority to discipline or effectively recommend discipline of employees outside their own departments. Rather, the employee handbook states that discipline is instituted by "your Coach or management-level Team Member." First line maintenance supervisors are known as Maintenance Coaches, and maintenance and production employees are grouped into separate Teams. As such, the record fails to establish that the Production Supervisors have the authority to dis-

cipline or to effectively recommend the discipline of maintenance employees. See *Ore-Ida Foods*, supra at 1019 (no common supervision between maintenance and production employees where production supervisors lacked authority to discipline or effectively recommend discipline of maintenance employees). Further, only the maintenance supervisors have the authority to grant a maintenance employee time-off. Even though the record contains some inconclusive evidence that no maintenance supervisors are present during some periods of the day, the record does not elaborate about the role of the production supervisors in the absence of the maintenance supervisors. In fact, the record indicates that maintenance supervisors are available during these periods by Nextel phone. Such inconclusive evidence cannot be relied upon to establish common supervision between maintenance and production employees. *Capri Sun, Inc.*, 330 NLRB 1124, 1126 (2000).

Maintenance employees share common functions. The maintenance employees are primarily in charge of maintaining the Employer's machinery, and the production employees are primarily in charge of producing the ice cream. Maintenance employees also share common skills, which are quite different from the skills of the production employees, who are significantly less skilled. Many maintenance employees who work on refrigeration require RITA certification, which involves a series of classes and a written test. Furthermore, maintenance employees require extensive experience in troubleshooting pneumatics, hydraulics, and electrical and manufacturing, computerized maintenance management, and industrial high-speed maintenance. Unlike the production employees, mechanics must pass a written test assessing their skill levels in these areas. Maintenance employees perform about 90% of the Employer's maintenance work, perhaps momentarily assisting with the trash or helping production employees carry "repack" in the event of a line breakdown. While production employees often perform minor or routine repairs of equipment, I find that this overlap in functions is merely incidental to the work regularly performed by maintenance employees, and not involving a high degree of skill. See *Ore-Ida Foods*, supra at 1019, citing *Phillips Products Co.*, 234 NLRB 323 (1978); see also *Capri Sun*, supra at 1126 (finding some overlap of light maintenance functions between maintenance and production did not negate separate identity of petitioned-for maintenance unit). The greater skill of the maintenance employees is also reflected by the fact that the maintenance employees are significantly higher paid than the production employees. Further reflective of the maintenance employees' greater skill is the fact that there

is virtually no temporary interchange between maintenance and production employees. Finally, unlike production employees, maintenance employees are required to provide their own costly tools.²² The Board considers a requirement that maintenance employees provide their own tools to be an indication of greater skill level. *Capri Sun*, supra at 1126.

Maintenance and production employees share other terms and conditions of employment, as well as fringe benefits.

Although many of the Employer's maintenance employees come into contact with production employees on the production lines, some maintenance employees have more limited contact. For example, there is very little contact between the approximately 16 Utility Group maintenance employees and the production employees. Similarly, maintenance employees repair and fabricate parts in the Machine Shop while production employees are prohibited from working in the Machine Shop due to their lack of skill. Further, during the annual shutdown, all 113 maintenance employees are required work, performing skilled maintenance work to restore the BOC's machinery and facilities, whereas only about a dozen production employees, who have volunteered, work by providing routine and minor assistance in clean-up and moving materials to the mechanics. See, e.g., *Capri Sun*, supra at 1125 (finding no significant interchange where production employees voluntarily performed routine and unskilled maintenance).

4. Employer has not established that maintenance employees share an overwhelming community of interest with production employees

Based on the above, I conclude that the maintenance employees are readily identifiable as a separate group of employees and that this distinct group shares a community of interest amongst themselves under traditional community of interest criteria. As such, in order to establish that the petitioned-for maintenance unit would not be appropriate, the Employer must establish that the production and maintenance employees share an overwhelming community of interest. The Board has characterized this burden as a "heightened showing." *Specialty Healthcare*, supra at 16. I conclude that the Employer has failed to establish this heightened

²² Although the Petitioner asserts that the average maintenance employee spent \$300 to \$500 on tools only, the Employer's Maintenance Manager admitted that \$5,000 was actually a fair estimate of the value of the maintenance employees' tools.

showing of an overwhelming community of interest. Although factors the Employer points to might show that a combined unit is an appropriate unit, these factors are not sufficient to render the petitioned-for unit inappropriate.

The Employer cites several cases that are readily distinguishable. For example, in *Buckhorn, Inc.*, 343 NLRB 201 (2004), the production and maintenance employees had essentially the same functions, where maintenance employees regularly performed production work. *Id.* at 203. Similarly, in *TDK Ferrites Corp*, 342 NLRB 1006 (2004), the Board relied on such factors as a significant amount of temporary interchange between production and maintenance employees and common supervision between maintenance and production to find a separate maintenance unit inappropriate. *Id.* at 1008.

The Employer also cites cases where the petitioned-for unit was an arbitrary and fractured unit. A party may demonstrate an overwhelming community of interest between employees inside and outside a proposed unit when the proposed unit is a fractured and arbitrary unit. *Specialty Healthcare*, supra at 18. For example, in *Peterson/Puritan Inc.*, 240 NLRB 1051 (1979), the union sought to represent only a portion of the employer's maintenance employees — the unskilled line mechanics at the employer's plant. *Id.* Here, the Union seeks to represent all classifications of the Employer's maintenance employees. Similarly, in *Chromalloy Photographic*, 234 NLRB 1046 (1978), the union sought to represent only a small unskilled portion of the employer's maintenance employees whose functions did not differ from other maintenance and production employees. *Id.*

The Employer's assertion that the bargaining history weighs in favor of finding that a maintenance-only unit is inappropriate is without merit. The brief and inconclusive bargaining history here consists of a one contract and an invalidated certification of election.²³ The record is unclear whether the contract was even in effect for its full term, as the Teamsters agreed to stop representing the employees in settlement of an unfair labor practice charge filed shortly after the contract went into effect. Bargaining history determined by the parties and not by the Board is not binding. *Laboratory Corporation of America Holdings*, 341 NLRB 1079, 1083 (2004). Here, neither the 1988 contract nor the invalidated certification of election were determined by the Board; rather they were determined by the parties only by means of voluntary

²³ Similarly, the fact that in 1999 the United Food and Commercial Workers petitioned for a unit inclusive of production and maintenance employees does not alter my decision.

recognition and a stipulated election agreement. Moreover, to the extent that the Employer asserts that the bargaining history reflects the fact that a production and maintenance unit is “the” appropriate unit, the Employer is mistaken regarding the standard. It is well established that the Board requires only that the petitioned-for unit be “an appropriate unit.” See e.g., *Capri Sun*, supra at 1127-8.²⁴

Finally, the Employer asserts that the petitioned-for unit is inappropriate because of its newly-launched Autonomous Maintenance program on Pilot Line 16. I accord this argument little weight. The evidence established that this program was first started about two years ago, but was discontinued; during the week of the hearing, the Pilot Program was restarted on only one of the Employer’s 25 production lines. On such a basis, it is far too speculative to conclude that the program will be successful. By the Employer’s own admission, production employees currently lack the skills even to perform even the routine preventative maintenance that the Autonomous Maintenance program seeks to implement. Even assuming that the program will succeed on Line 16, this would not alter my decision, as the production employees would then be performing only minor and routine maintenance duties requiring lesser skill on a single line. See e.g., *Capri Sun, Inc*, supra at 1127 (maintenance-only unit appropriate despite production employees’ routine performance of lesser-skilled, routine maintenance duties). As such, this would not suffice to establish an overwhelming community of interest between the production and maintenance employees.

VI. CONCLUSION: On the basis of the foregoing and the record as a whole, I shall direct an election in the following appropriate Unit:

<u>INCLUDED:</u>	All full-time and regular part-time maintenance employees employed by the Employer at its facility located at 7301 District Boulevard, Bakersfield, CA.
<u>EXCLUDED:</u>	All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employers, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Techni-

²⁴ A further consideration that minimizes the significance of what little bargaining history there is in this case is that the record is largely silent as to whether and to what degree the Employer’s operations have changed since 1988.

cian, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

There are approximately 113 employees in the Unit found appropriate.

DIRECTION OF ELECTION²⁵

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the Unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

²⁵ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **November 30, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, www.nlr.gov,²⁶ by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **two** copies,

²⁶ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.


Notice of Posting Obligations

According to §103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. §103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of §102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 7, 2011**. The request may be filed electronically through the Agency's web site, www.nlr.gov,²⁷ but may not be filed by facsimile.

DATED at Los Angeles, California this 23rd day of November, 2011.


James J. McDermott, Regional Director
National Labor Relations Board
Region 31

²⁷ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NESTLE DRYER'S ICE CREAM
Employer

and

Case 31-RC-66625

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 501, AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, Chairman

CRAIG BECKER, Member

BRIAN E. HAYES, Member

Dated, Washington, D.C., December 28, 2011.

¹ Member Hayes agrees that a unit of maintenance employees is an appropriate unit. However, he does not rely on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), or the Regional Director's finding that production employees do not share such an overwhelming community of interest with maintenance employees so as to compel their inclusion in the unit. Instead, Member Hayes finds that, under the traditional community-of-interest test, the interests of the petitioned-for unit are sufficiently distinct from the production employees. See *Newton-Wellesley Hospital*, 250 NLRB 409, 411-412 (1980), cited in his dissent in *Specialty Healthcare*, supra.

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case 31-CA-074297	Date Filed 2-9-12
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INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer NESTLE-DREYER'S GRAND ICE CREAM, INC	b. Tel. No. (661) 398-3500
	c. Cell No.
	f. Fax No.
	g. e-Mail
	h. Number of workers employed
d. Address (Street, city, state, and ZIP code) 7301 DISTINCT BLVD. BAKERSFIELD, CA 93313	e. Employer Representative BERNARD J. BOBBER, ESQ.
i. Type of Establishment (factory, mine, wholesaler, etc.) ICE CREAM PLANT	j. Identify principal product or service ICE CREAM PRODUCTS
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) WITHIN SIX MONTHS LAST PAST THE ABOVE NAMED EMPLOYER HAS FAILED AND REFUSED TO BARGAIN WITH THE RECENTLY CERTIFIED EXCLUSIVE BARGAINING AGENT.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) ADAM S. STERN, ESQ.	
4a. Address (Street and number, city, state, and ZIP code) THE MYERS LAW GROUP 9327 FAIRWAY VIEW PLACE, SUITE 100 RANCHO CUCAMONGA, CA 91730	4b. Tel. No. (909) 919-2027
	4c. Cell No.
	4d. Fax No. (888)375-2102
	4e e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) INTERNATIONAL UNION OF OPERATING ENGINEERS AFLCIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	ADAM N. STERN, ESQ. (Print/type name and title or office, if any)
Address 9327 Fairway View Pl, Ste. 100, Rancho Cucamonga, CA 91730	02/07/2012 (date)
	Tel. No. (213) 223-7617
	Office, if any, Cell No.
	Fax No. (888)375-2102
	e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Nestlé-Dreyer's Grand Ice Cream, Inc. and International Union of Operating Engineers Local 501, AFL-CIO. Case 31-CA-074297

May 18, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on February 9, 2012, the Acting General Counsel issued the complaint on March 27, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 31-RC-66625. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 17, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On April 18, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its contention in the underlying representation proceeding that the bargaining unit is inappropriate.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously

¹ In its response, the Respondent argues that the recess appointments of Members Block, Flynn, and Griffin to the Board by the President were in violation of Arts. I and II of the United States Constitution, and it requests that the Motion for Summary Judgment be held in abeyance unless and until the Board regains a quorum. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument. Accordingly, the Respondent's request that the Motion for Summary Judgment be held in abeyance is denied.

unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility located in Bakersfield, California, has been engaged in the business of producing ice cream and frozen dairy products.

During the 12-month period ending January 2012, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and sold and shipped from its Bakersfield, California facility goods valued in excess of \$50,000 directly to points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Union of Operating Engineers Local 501, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on January 4, 2012, the Union was certified on January 13, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time maintenance employees employed by Respondent at its facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Angela D. Green has held the position of the Respondent's Vice President, Human Resources, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about January 19, 2012, the Union, by Christopher A. Brown, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit.

Since that date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about January 19, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Nestlé-Dreyer's Grand Ice Cream, Inc., Bakersfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers Local 501, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time maintenance employees employed by Respondent at its facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

(b) Within 14 days after service by the Region, post at its facility in Bakersfield, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.³ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all cur-

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

NESTLÉ-DREYER'S GRAND ICE CREAM

3

rent employees and former employees employed by the Respondent at any time since January 19, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 18, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union of Operating Engineers Local 501, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

Included: All full-time and regular part-time maintenance employees employed by us at our facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

NESTLÉ-DREYER'S GRAND ICE CREAM, INC.

FILED: July 29, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1684 (L)
(31-CA-074297)
(31-RC-66625)

NESTLE DREYER'S ICE CREAM COMPANY

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD; INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501, AFL-CIO

Respondents

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;
COALITION FOR A DEMOCRATIC WORKPLACE; INTERNATIONAL
FOODSERVICE DISTRIBUTORS ASSOCIATION; NATIONAL
ASSOCIATION OF MANUFACTURERS; NATIONAL ASSOCIATION OF
WHOLESALE-DEALERS; NATIONAL COUNCIL OF CHAIN
RESTAURANTS; NATIONAL FEDERATION OF INDEPENDENT BUSINESS;
NATIONAL RETAIL FEDERATION; RETAIL LITIGATION CENTER

Amici Supporting Petitioner

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS

Amicus Supporting Respondent

No. 12-1783
(31-CA-074297)
(31-RC-66625)

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

NESTLE DREYER'S ICE CREAM COMPANY

Respondent

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS

Amicus Supporting Petitioner

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;
COALITION FOR A DEMOCRATIC WORKPLACE; INTERNATIONAL
FOODSERVICE DISTRIBUTORS ASSOCIATION; NATIONAL
ASSOCIATION OF MANUFACTURERS; NATIONAL ASSOCIATION OF
WHOLESALE-DISTRIBUTORS; NATIONAL COUNCIL OF CHAIN
RESTAURANTS; NATIONAL FEDERATION OF INDEPENDENT BUSINESS;
NATIONAL RETAIL FEDERATION; RETAIL LITIGATION CENTER

Amici Supporting Respondent

J U D G M E N T

In accordance with the decision of this court on review of an agency order,

A-432

the order is vacated. This case is remanded to the agency for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: July 29, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1684
(31-CA-074297)
(31-RC-66625)

NESTLE DREYER'S ICE CREAM COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD; INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501, AFL-CIO,

Respondents,

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;
COALITION FOR A DEMOCRATIC WORKPLACE; INTERNATIONAL
FOODSERVICE DISTRIBUTORS ASSOCIATION; NATIONAL
ASSOCIATION OF MANUFACTURERS; NATIONAL ASSOCIATION OF
WHOLESALE-DISTRIBUTORS; NATIONAL COUNCIL OF CHAIN
RESTAURANTS; NATIONAL FEDERATION OF INDEPENDENT BUSINESS;
NATIONAL RETAIL FEDERATION; RETAIL LITIGATION CENTER,

Amici Supporting Petitioner,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

Amicus Supporting Respondent.

No. 12-1783
(31-CA-074297)
(31-RC-66625)

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NESTLE DREYER'S ICE CREAM COMPANY,

Respondent,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

Amicus Supporting Petitioner,

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;
COALITION FOR A DEMOCRATIC WORKPLACE; INTERNATIONAL
FOODSERVICE DISTRIBUTORS ASSOCIATION; NATIONAL
ASSOCIATION OF MANUFACTURERS; NATIONAL ASSOCIATION OF
WHOLESALE-DISTRIBUTORS; NATIONAL COUNCIL OF CHAIN
RESTAURANTS; NATIONAL FEDERATION OF INDEPENDENT BUSINESS;
NATIONAL RETAIL FEDERATION; RETAIL LITIGATION CENTER,

Amici Supporting Respondent.

O R D E R

Upon consideration of the unopposed motion filed by the National Labor

A-435

Relations Board ("Board") to vacate and remand and for expedited issuance of mandate, the court grants the motion. The court vacates the Board's order and remands the case to the Board for further consideration in light of the Supreme Court's decision in NLRB v. Noel Canning, No. 12-1281, 134 S. Ct. 2550 (U.S., June 26, 2014).

The clerk is directed to issue the mandate forthwith.

Entered at the direction of the panel: Judge Duncan, Judge Diaz, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

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Nestlé-Dreyer's Grand Ice Cream, Inc. and International Union of Operating Engineers Local 501, AFL-CIO. Case 31-CA-074297

November 5, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On May 18, 2012, the National Labor Relations Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 45. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Fourth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included three persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on February 9, 2012, the Acting General Counsel issued the complaint on March 27, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize it and bargain following the Union's certification in Case 31-RC-66625. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 17, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On April 18, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its contention in the underlying representation proceeding that the bargaining unit is inappropriate.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).¹ Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility located in Bakersfield, California, has been engaged in the business of producing ice cream and frozen dairy products.

During the 12-month period ending January 2012, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and sold and shipped from its Bakersfield, California facility goods valued in excess of \$50,000 directly to points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Union of Operating Engineers Local 501, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on January 4, 2012, the Union was certified on January 13, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

¹ Member Johnson did not participate in the underlying representation proceeding and expresses no opinion whether it was correctly decided. He agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case.

Included: All full-time and regular part-time maintenance employees employed by Respondent at its facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Angela D. Green has held the position of the Respondent's vice president, human resources, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about January 19, 2012, the Union, by Christopher A. Brown, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit.

Since that date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about January 19, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certifi-

cation as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Nestlé-Dreyer's Grand Ice Cream, Inc., Bakersfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers Local 501, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time maintenance employees employed by Respondent at its facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

(b) Within 14 days after service by the Region, post at its facility in Bakersfield, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NESTLÉ-DREYER'S GRAND ICE CREAM, INC.

3

31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 5, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union of Operating Engineers Local 501, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

Included: All full-time and regular part-time maintenance employees employed by us at our facility located at 7301 District Boulevard, Bakersfield, CA.

Excluded: All other employees, production employees, quality assurance employees, office and plant clerical employees, professional employees, persons employed by other employees, QA Receiving Coordinator, Microbiologist, Shipping Assistant, Input/Output Operator, Receiving Coordinator, Cycle Counter, Inventory Clerk, Accounting Specialist, Safety and Environment Technician, H.R. Administrative Assistant, Maintenance Scheduler, guards and supervisors as defined in the Act, as amended.

NESTLÉ-DREYER'S GRAND ICE CREAM, INC.

The Board's decision can be found at www.nlrb.gov/case/31-CA-074297 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

